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Bureau of Customs and Border Protection

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and

U.S. Court of International Trade

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DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

NOTICE

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Bureau of Customs and Border Protection

General Notices

19 CFR PART 101

[CBP Dec. 03–08]

EXPANSION OF THE PORT LIMITS OF PORTLAND, MAINE

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine. This change is being made to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: John P. Wagner, Office of Field Operations, 202–927–3825.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A Notice of Proposed Rulemaking was published in the **Federal Register** (68 FR 1172) on January 9, 2003, which proposed to amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)), to extend the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn in order to provide better service to carriers, importers, and the general public. The proposal was made in order to include the City of Auburn within the port limits to facilitate the clearance of international cargo at the Auburn Intermodal Facility ("AIF"). AIF is a rail/truck intermodal facility with a high cube, doublestack intermodal terminal.

ANALYSIS OF COMMENTS

Three comments were received in response to the proposal. All three comments strongly supported the inclusion of the City of Au-

burn in the port of Portland, Maine, for the purposes of international trade facilitation and of expanded economic development in the Auburn area.

According to the comments, the AIF will afford the Bureau of Customs and Border Protection (CBP) great flexibility in protecting our borders against terrorist activities when conducting examinations and clearance of cargo entering the United States. The expansion of the port of Portland will also help to eliminate needless truck traffic on the highway system by allowing examinations and clearance closest to the point of entry. Trucks will no longer need to travel further in bound to be examined. These benefits are in addition to the economic boost which is expected to occur as a result of the port expansion.

CONCLUSION

CBP believes that the expansion of the port of Portland, Maine, to include the City of Auburn is a positive step in the facilitation of the processing of international cargo. Accordingly, CBP has decided to proceed with the proposed expansion.

NEW PORT LIMITS

The port limits of the port of entry of Portland, Maine, are expanded to include the City of Auburn. The territory included in the port of Portland is as follows:

Portland, Maine and the territory embracing the municipalities of Auburn, South Portland, Falmouth, and Cape Elizabeth, in the State of Maine, and Peak, Long, Cliff, Cushing and Diamond Islands, in the State of Maine.

AUTHORITY

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Although a notice was issued for public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C.601 *et. seq.*). Agency organization matters such as this port expansion are not subject to Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

AMENDMENT TO THE REGULATIONS

For the reasons set forth above, part 101 of the Customs Regulations is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:
AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, and 1646a. Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * * * *

2. In the list of ports in § 101.3(b)(1), under the state of Maine, the "Limits of port" column adjacent to "Portland" in the "Ports of entry" column is amended by removing the citation "E.O. 9297, Feb. 1, 1943 (8 FR 1479)" and by adding in its place "CBP Dec. 03–08".

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Dated: July 14, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, July 18, 2003 (68 FR 42586)]

19 CFR PARTS 101 AND 122

(CBP Dec. 03–09)

CUSTOMS AND BORDER PROTECTION FIELD ORGANIZATION; FARGO, NORTH DAKOTA

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs and Border Protection (CBP) by establishing a new port of entry at Fargo, North Dakota. The new port of entry includes Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport; and a portion of Clay County in Minnesota. This change will assist CBP in its continuing efforts to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Richard L. Balaban, Mission Support, Office of Field Operations, Bureau of Customs and Border Protection, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its continuing efforts to provide better service to carriers, importers, and the general public, on December 2, 2002, Customs (then under the Department of the Treasury) published a document in the **Federal Register** (67 FR 71510) that proposed to amend parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) to establish a port of entry at Fargo, North Dakota, to include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport, and, accordingly, to remove Hector International Airport as a user-fee airport. As well as including Hector International Airport, the port limits of Fargo were also proposed to include a portion of Clay County in Minnesota. The proposed change of status for Hector International Airport from a user-fee airport to being included within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

The proposal to establish Fargo, North Dakota as a port of entry was based on Customs analysis of the following information:

1. Fargo is serviced by three modes of transportation:
   a) rail (the Burlington Northern Santa Fe railroad);

b) air (at Hector International Airport, two passenger carriers (Northwest and United Express) and five courier-delivery carriers (Air Bourne Express, Corporate Express, DHL, FED EX, and UPS)); and
c) highway (two U.S. interstate highways: I–29 and I–94);

2. The Fargo, North Dakota area has a population of approximately 175,000, with the potential to increase even further;
3. Regarding the five actual or potential workload criteria:
   a) Hector International Airport had 2,911 international air passengers for FY 2001, an increase of 61% over FY 2000;
   b) Hector International Airport had 151 formal consumption entries for FY 2001, with no single company accounting for more than half of the projected entries; and
   c) Hector International Airport had 814 scheduled international aircraft arrivals for FY 2001, an increase of 65% over FY 2000.

Customs believed that significant benefits would be provided to the North Dakota business community by creating a port of entry at Fargo and that the cost of providing the services of one full-time and one part-time Customs official would be minimal to the Federal Government.

Conditional Status

Based on the information above and the level and pace of development in the Fargo area, Customs believed that there was sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis. In the Notice Customs stated that if it is decided to create a port of entry at Fargo and to terminate Hector International Airport's designation as a user-fee airport, Customs will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it was also noted that the proposal relied on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation were adopted as a final rule, Customs would review the actual workload generated within the new port of entry in one year. If that review indicated that the actual workload was below the port of entry criteria established in T.D. 82–37, as revised by T.D. 86–14, procedures may be instituted to revoke the port of entry status. In such case, the airport could reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

The public comment period for the proposed amendments closed January 31, 2003.

On March 1, 2003, the U.S. Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security, and was redesignated as the Bureau of Customs and Border Protection (CBP).

DISCUSSION OF COMMENTS

One comment was received that was favorable to the establishment of Fargo as a port of entry.

Comment:

The commenter requested that, should Customs (now CBP) revoke the port of entry status of Fargo after the one-year conditional status period, Hector International Airport's status should automatically be reverted back to a user-fee airport. The commenter stated that it was concerned that there could be a lapse in Customs services if the reapplication language contained in the Notice was strictly followed. The commenter further stated that Customs and the airport authority could coordinate any transition procedures.

CBP Response:

CBP concurs with this comment. Accordingly, the terms and conditions in the Memorandum of Agreement between CBP and the airport authority will provide for the procedure by which the airport may again be designated as a user fee airport, should its status as a port of entry be terminated.

Comment:

The same commenter stated that the description of the proposed port of entry limits needed to be adjusted to include more of the Fargo-area community in North Dakota and less of the Clay County area in Minnesota. According to the commenter, the revised geographical limits for the new Fargo port of entry would more accurately reflect the area served by Fargo's processing facilities and Customs personnel. Accordingly, the commenter stated that the port of limit boundaries be established as follows:

> *Eastern boundary*—The proposed Eastern boundary of the port of entry in Clay County, Minnesota, needs to be moved west from Clay County highway 11 to a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10;
>
> *Southern boundary*—The proposed Southern boundary of the port of entry in both North Dakota and Minnesota needs to be extended south from U.S. Interstate 94 to an east-west line that is in accordance with 64th Avenue South in Fargo, North Dakota; and,
>
> *Western boundary*—The proposed Western boundary of the port of entry in Cass County, North Dakota, needs to be extended west from U.S. Interstate 29 in Fargo to a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

CBP Response:

CBP concurs with this comment. Accordingly, the description of the geographical limits of the port of entry is revised as stated by the commenter.

CONCLUSION

After further review and consideration of this matter, CBP has determined that a port of entry will be established at Fargo--with the geographical limits of the port of entry modified as discussed in this document—and that Hector International Airport, because it is within the limits of this port of entry, will no longer be designated as a user-fee airport. This document amends the Customs Regulations to reflect this determination. It is noted that the designation of Fargo as a port of entry is on a conditional basis for one year. If, after a year it is determined that Fargo does not merit port of entry status, a new document will be prepared for the Federal Register removing Fargo's designation.

LIMITS OF PORT OF ENTRY LIMITS

The description of the geographical limits of the Fargo port of entry is as follows:

In Cass County, North Dakota:

Northern boundary, Cass County highway 20,

Southern boundary, an east-west line in accordance with 64th Avenue South in Fargo, North Dakota, and

Western boundary, a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

In Clay County, Minnesota:

Northern boundary, Clay County highway 22

Southern boundary, an east-west line in accordance with 64th Avenue South in Fargo, Cass County, North Dakota, and

Eastern boundary, a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10.

AUTHORITY

This amendment is promulgated pursuant to Customs authority under 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Although Customs solicited public comments, no notice and public procedure was required pursuant to 5 U.S.C. 553 because this matter relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Further, matters involving agency management and organization are not subject to Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, User fee facilities.

119 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Freight, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) are amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and specific authority citation for § 101.3 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a; Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * * * *

2. In § 101.3, the list of ports in paragraph (b)(1) is amended by adding, in alphabetical order, under the State of North Dakota, "Fargo" in the "Ports of entry" column and "CBP Dec. 03–09 " in the adjacent "Limits of port" column.

PART 122—AIR COMMERCE REGULATIONS

3. The general authority citation for part 122 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a:

* * * * * * *

4. In § 122.15, the list of user fee airports in paragraph (b) is amended by removing "Fargo, North Dakota" in the column headed "Location" and, on the same line, "Hector International Airport" in the column headed "Name".

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Dated: July 14, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, July 18, 2003 (68 FR 42587)]

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19 CFR PART 10

[CBP Dec. 03–10]

RIN 1515-AD27

REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL PRODUCTS

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the regulation originally promulgated to provide procedures for the issuance of the refunds of duties paid on certain wool imports pursuant to section 505 of Title V of the Trade and Development Act of 2000. As section 5101 of the Trade Act of 2002 significantly amended section 505 and provides self-effectuating procedures for the issuance of the refunds, the regulation implementing section 505 is no longer necessary and is obsolete.

DATES: The amendment is effective July 24, 2003.

FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C., 20229, Tel. (202) 572–8763.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 18, 2000, the Trade and Development Act of 2000 was signed into law. *See* Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs (now the Bureau of Customs and Border Protection (CBP)) promulgated in § 10.184, Customs Regulations (19 CFR 10.184), a regulation to provide the procedures for issuing refunds pursuant to section 505. *See* 65 FR 81344. This section was subsequently amended by documents published in the **Federal Register** on April 23, 2001 (66 FR 20392) and January 23, 2002 (67 FR 3059).

On August 6, 2002, President Bush signed into law the Trade Act of 2002. Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, Title L sets forth miscellaneous trade benefits with Subtitle A pertaining specifically to wool provisions. Within Subtitle A, section 5101, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505.

The amendments to section 505 are extensive and self-effectuating, making § 10.184 of the Customs Regulations unnecessary and obsolete. For this reason, part 10 of the Customs Regulations is amended by removing § 10.184.

It is noted that a document was published in the **Federal Register** (67 FR 52520) on August 12, 2002, that set forth section 505 of the Trade Act of 2002, as amended, with its self-effectuating procedures, and provided a detailed description of the changes to the wool duty payment program.

EXECUTIVE ORDER 12866, REGULATORY FLEXIBILITY ACT, INAPPLICABILITY OF PRIOR PUBLIC NOTICE AND COMMENT PROCEDURES AND DELAYED EFFECTIVE DATE REQUIREMENTS

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Because this amendment merely removes from the Customs Regulations a regulation which is now obsolete, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and com-

ment procedures on this regulation are unnecessary and contrary to the public interest. For the same reason, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DRAFTING INFORMATION

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP.

LIST OF SUBJECTS IN 19 CFR PART 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows, and the specific authority for § 10.184 is removed:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * * * *

2. The center heading preceding § 10.184 and § 10.184 are removed.

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Approved: July 21, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, July 24, 2003 (68 FR 43624)]

19 CFR PART 102

[CBP Dec. 03–11]

TECHNICAL CORRECTIONS: RULES OF ORIGIN OF IMPORTED GOODS (OTHER THAN TEXTILE AND APPAREL PRODUCTS) FOR PURPOSES OF THE NAFTA

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; corrections.

SUMMARY: This document makes technical corrections to the Customs Regulations to reflect the terms of the current version of the Harmonized Tariff Schedule of the United States within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA.

DATES: These corrections are effective July 24, 2003.

FURTHER INFORMATION CONTACT: Robert Altneu, International Agreements Staff, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C., 20229, Tel. (202) 572–8754.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 102.20 of the Customs Regulations (19 CFR 102.20) lists specific tariff shift rules and other requirements for determining the country of origin of imported goods (other than textiles and apparel products covered by § 102.21) for certain North American Free Trade Agreement (NAFTA) purposes. Specifically, § 102.20 prescribes tariff rules that may be used to determine when a good is a good of a NAFTA country (United States, Canada or Mexico). *See* the NAFTA Implementation Act, Public Law 103–182, 107 Stat. 437 (December 8, 1993).

Section 102.20 presents the origin rules in terms of tariff classification changes (tariff shifts) and/or specific operations which are required in order for origin to be conferred. The rule applicable to a particular good is determined by that good's tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) at the time the country of origin determination is made.

NEED FOR CORRECTION

Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is required to

keep the HTSUS under continuous review and prepare investigations proposing modifications thereto to the President. *See* U.S. International Trade Commission Investigation No. 1205–5 (final), Proposed Modifications to the Harmonized Tariff Schedule of the United States, Publication 3430 (June 2001).

In 2002, the HTSUS was amended which resulted in the transfer of certain goods, for tariff classification purposes, to different or newly created tariff provisions, as well as the removal of tariff provisions currently referenced in § 102.20. *See* Presidential Proclamation 7515, dated December 18, 2001 (66 FR 66549, dated December 26, 2001). The changes to the HTSUS involve product coverage and/or numbering of select headings and subheadings, and are not intended to have any other substantive effect. *See* T.D. 96–48, Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement, 61 FR 28934 (June 6, 1996) and 60 FR 22312 (May 5, 1995). This document makes technical corrections to § 102.20 to reflect the terms of the current version of the HTSUS. The following examples are offered to illustrate the need for technical corrections to § 102.20.

Example: Pursuant to the existing terms of § 102.20(b), the tariff shift rule for HTSUS headings 1301—1302 permits a change to these headings "from any other chapter." Prior to the 2002 amendments to the HTSUS, poppy straw concentrates were classifiable in Chapter 13 and therefore did not undergo the requisite tariff shift necessary to confer origin. As a result of the 2002 amendments to the HTSUS, certain concentrates of poppy straw were moved from Chapter 13 and provided for under subheading 2939.11.00, HTSUS. Poppy straw concentrates classifiable in this provision (Chapter 29) would now satisfy the tariff shift rule for Chapter 13 pursuant to the existing terms of § 102.20(b). In order to reflect the original scope of the tariff shift rule for Chapter 13 within § 102.20(b), the tariff shift rule needs to be amended to specifically exclude changes from HTSUS subheading 2939.11 from conferring origin.

Example: In 2002, a new subheading was created at 1904.30.00, HTSUS, which provides for "bulgur wheat." This product was previously classified in the basket "other" provision under subheading 1904.90.00, HTSUS. As the new subheading 1904.30.00, HTSUS, is not included in the tariff shift rules set forth in § 102.20(d), the goods classifiable under this provision are currently precluded from having their origin determined pursuant to § 102.20(d). The technical corrections in this document amend the tariff shift rules in § 102.20(d) to add this new tariff provision and the rule "from any other heading," which was the rule for bulgur wheat when it was classified under subheading 1904.90 in the 2001 version of the HTSUS.

EXECUTIVE ORDER 12866, REGULATORY FLEXIBILITY ACT, INAPPLICABILITY OF PRIOR PUBLIC NOTICE AND COMMENT PROCEDURES AND DELAYED EFFECTIVE DATE REQUIREMENTS

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Because these amendments merely update the Customs Regulations by reflecting the terms of the 2002 HTSUS within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA, Customs and Border Protection (CBP) has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because the document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DRAFTING INFORMATION

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

AMENDMENT TO THE REGULATIONS

For the reasons stated above, part 102 of the Customs Regulations (19 CFR part 102) is amended as set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.20, the table is amended by:

(a) Removing the entries for "2009.11–2009.30", "2009.40–2009.80", "2816.20", "2816.30", "2841.10–2841.40", "2901.10–2901.90", "2905.49–2905.50", "2907.29–2907.30", "2933.11–2934.90", "3002.90", "3809.91–3809.99", "3817.10–3817.20", "4101–4103", "4104–4107", "4108–4111", "4601", "4811.10–4811.31", "4811.39", "4811.40–4811.90", "4823.11", "4823.20–4823.59", "6812.10",

"6812.20", "6812.30", "6812.40", "8101.10–8101.92", "8101.93", "8102.10–8102.92", "8102.93", "8103.10–8113.00", "8508.10–8508.80", "8508.90", "9009.90", "9021.11", "9021.19", and "9112.10–9112.80";

(b) Adding entries, in numerical order, for "1904.30", "2009.11–2009.39", "2009.41–2009.80", "2816.40", "2841.10–2841.30", "2901.10–2901.29", "2905.49–2905.59", "2907.29", "2933.11–2934.99", "3006.70", "3006.80", "3809.91–3809.93", "3817", "3825.10–3825.69", "3825.90", "4101", "4102", "4103", "4104–4106", "4107", "4112", "4113", "4114.10–4115.20", "4601.20–4601.99", "4811", "4823.12", "4823.20–4823.40", "8101.10–8101.95", "8101.96", "8102.10–8102.95", "8102.96", "8103.20–8113.00", "9009.91–9009.99", "9021.10", and "9112.20";

(c) Revising the entries in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" column listing for "1301–1302", "2821.20", "2937–2941", "3001.10", "3001.20–3001.90", "3002.10–3002.90", "3003.10", "3003.20", "3003.31", "3003.39", "3003.40", "3003.90", "3004.10", "3004.20", "3004.31", "3004.32", "3004.39", "3004.40", "3004.50", "3004.90", "3005.10", "3006.10", "3006.20–3006.60", "3402.11", "3402.12–3402.20", "4401–4411", "6812.90", "8467.91–8467.99", "8471.60–8472.90", "8479.10–8479.89", and "9404.30–9404.90"; and

(d) Adding in paragraph (h) titled "Section VIII: Chapters 41 through 43", in the "Chapter 42 Note" between the clauses "4202.32.40 through 4202.32.95" and "4202.92.15 through 4202.92.30", the reference ", 4202.92.05,".

The additions and revisions read as follows:

§ 102.20 Specific rules by tariff classification.

*	*	*	*	*	*	*
HTSUS		*Tariff shift and/or other requirements*				
*	*	*	*	*	*	*
1301–1302		A change to heading 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11.				
*	*	*	*	*	*	*
1904.30		A change to subheading 1904.30 from any other heading.				
*	*	*	*	*	*	*
2009.11–2009.39		A change to subheading 2009.11 through 2009.39 from any other chapter.				

2009.41–2009.80	A change to subheading 2009.41 through 2009.80 from any other chapter.
* * * * * * *	
2816.40	A change to subheading 2816.40 from any other subheading, except a change to oxides, hydroxides and peroxides of strontium of subheading 2816.40 from subheading 2530.90.
* * * * * * *	
2821.20	A change to subheading 2821.20 from any other subheading, except from earth color mineral substances of 2530.90 or from subheading 2601.11 through 2601.20.
* * * * * * *	
2841.1–2841.30	A change to subheading 2841.10 through 2841.30 from any other subheading, including another subheading within that group.
* * * * * * *	
2901.10–2901.29	A change to subheading 2901.10 through 2901.29 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29.
* * * * * * *	
2905.49–2905.59	A change to subheading 2905.49 through 2905.59 from any other subheading, including another subheading within that group.
* * * * * * *	
2907.29	A change to subheading 2907.29 from any other subheading, including a change to phenol-alcohols of subheading 2907.29, from polyphenols of subheading 2907.29, or a change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29, except a change from subheading 2707.99.
* * * * * * *	

2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group.
* * * * * * *	
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19.
* * * * * * *	
3001.10	A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a powder classified in subheading 3001.10, and except a change from subheading 3006.80.
3001.20–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80.
3002.10–3002.90	A change to subheading 3002.10 through 3002.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80.
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.20, or 3006.80.
3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3006.80.
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.12 or 3006.80.
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29, or except from subheading 3006.80.

3003.40	A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or 3006.80 or alkaloids or derivatives thereof classified in Chapter 29.
3003.90	A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.80.
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, 3003.20, or 3006.80.
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, 3003.20, or 3006.80.
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.12, 3003.31, 3003.39, or 3006.80.
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or 3006.80, or from adrenal corticosteroid hormones classified in Chapter 29.
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or 3006.80, or from hormones or derivatives thereof classified in Chapter 29.
3004.40	A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, 3003.40 or 3006.80, or alkaloids or derivatives thereof classified in Chapter 29.
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.90 or 3006.80, or vitamins classified in Chapter 29 or products classified in heading 2936.

3004.90	A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.80, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content.
3005.10	A change to subheading 3005.10 from any other subheading, except from subheading 3006.80 or 3825.30.
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20, 3006.80, 3825.30, or 4206.10.
3006.20–3006.60	A change to subheading 3006.20 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.80 or 3825.30.
3006.70	A change to subheading 3006.70 from any other subheading, except from subheading 3006.80 or 3825.30, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3006.80	A change to subheading 3006.80 from any other chapter.
* * * * * * *	
3402.11	A change to subheading 3402.11 from any other subheading, except from mixed alkylbenzenes of heading 3817.
3402.12–3402.20	A change to subheading 3402.12 through 3402.20 from any other subheading, including another subheading within that group.
* * * * * * *	
3809.91–3809.93	A change to subheading 3809.91 through 3809.93 from any other subheading, including another subheading within that group.
* * * * * * *	

3817	A change to heading 3817 from any other heading, including changes from one product to another within that heading, except from subheading 2902.90.
* * * * * * *	
3825.10–3825.69	A change to subheading 3825.10 through 3825.69 from any other chapter, except from Chapter 28 through 38, 40 or 90.
3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.90, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
* * * * * * *	
4101	A change to hides or skins of heading 4101 which have undergone a tanning (including a pretanning) process which is reversible from any other good of heading 4101 or from any other chapter; or A change to any other good of heading 4101 from any other chapter.
4102	A change to hides or skins of heading 4102 which have undergone a tanning (including a pretanning) process which is reversible from any other good of heading 4102 or from any other chapter; or A change to any other good of heading 4102 from any other chapter.
4103	A change to hides or skins of heading 4103 which have undergone a tanning (including a pretanning) process which is reversible from any other good of heading 4103 or from any other chapter; or A change to any other good of heading 4103 from any other chapter.

4104–4106	A change to heading 4104 through 4106 from any other heading, including another heading within that group, except from hides or skins of heading 4101 through 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4107, 4112 or 4113.
4107	A change to heading 4107 from any other heading except from hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4104.
4112	A change to heading 4112 from any other heading except from hides or skins of heading 4102 which have undergone a tanning (including a pre- tanning) process which is reversible, or from heading 4105.
4113	A change to heading 4113 from any other heading except from hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4106.
4114.10–4115.20	A change to subheading 4114.10 through 4115.20 from any other subheading, including a subheading within that group.
* * * * * * *	
4401–4411	A change to heading 4401 through 4411 from any other heading, including another heading within that group; or A change to strips continuously shaped along the ends and also continuously shaped along the edges or faces of heading 4409 from strips continuously shaped only along the edges or faces of heading 4409.
* * * * * * *	
4601.20–4601.99	A change to subheading 4601.20 through 4601.99 from any other subheading, including another heading within that group.
* * * * * * *	

4811	A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823; A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823; or A change to any other good of heading 4811 from any other chapter.
* * * * * * *	
4823.12	A change to subheading 4823.12 from any other subheading.
* * * * * * *	
4823.20–4823.40	A change to subheading 4823.20 through 4823.40 from any other chapter.
* * * * * * *	
6812.90	A change to subheading 6812.90 from any other heading; or A change to yarn and thread of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90; or A change to cords and string, whether or not plaited of subheading 6812.90 from any other subheading or from any other good also classified in subheading 6812.90, except from yarn and thread of subheading 6812.90; or,

	A change to woven or knitted fabric of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90.
* * * * * * *	
8101.10–8101.95	A change to subheading 8101.10 through 8101.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8101.10 through 8101.95, including from materials also classified in subheading 8101.10 through 8101.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip.
8101.96	A change to subheading 8101.96 from any other subheading, except from subheading 8101.95.
* * * * * * *	
8102.10–8102.95	A change to subheading 8102.10 through 8102.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8102.10 through 8102.95, including from materials also classified in subheading 8102.10 through 8102.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip.
8102.96	A change to subheading 8102.96 from any other subheading, except from subheading 8102.95.
* * * * * * *	
8103.20–8113.00	A change to subheading 8103.20 through 8113.00 from any other subheading, including another subheading within that group; or

	A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
* * * * * * *	
8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407, or except from heading 8501 when resulting from a simple assembly.
* * * * * * *	
8471.60–8472.90	A change to printing machines of subheading 8472.90 from any other subheading, except from subheading 8443.11 through 8443.60; A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly.
* * * * * * *	
8479.10–8479.89	A change to printing machines of subheading 8479.89 from any other subheading, except from subheading 8443.11 through 8443.60; or A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group.
* * * * * * *	

9009.91–9009.99	A change to subheading 9009.91 through 9009.99 from any other heading.
* * * * * * *	
9021.10	A change to subheading 9021.10 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly.
* * * * * * *	
9112.20	A change to subheading 9112.20 from any other subheading, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a).
* * * * * * *	
9404.30–9404.90	A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90.
* * * * * * *	

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Approved: July 21, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, July 24, 2003 (68 FR 43630)]

19 CFR PART 133

[CBP Decision 03–12]

RIN 1515-AC98

CIVIL FINES FOR IMPORTATION OF MERCHANDISE BEARING A COUNTERFEIT MARK

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify the limit on the amount of a civil fine which may be assessed by the Bureau of Customs and Border Protection (CBP; a bureau of the new Department of Homeland Security that encompasses much of the agency formerly known as the U.S. Customs Service) when imported merchandise bearing a counterfeit mark is seized under 19 U.S.C. 1526(e). The regulations currently use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The language set forth in the amended regulation adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine good according to the manufacturer's suggested retail price (MSRP), without any reference to domestic value. Because the MSRP excludes discounted sales and markdowns, it is usually greater than the good's domestic value. Removing the distinction between the statutory and regulatory language will clear up confusion and result in CBP more uniformly determining the amount of a civil fine when merchandise bearing a counterfeit mark is imported.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Office of Regulations and Rulings: (202) 572-8743.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Anticounterfeiting Consumer Protection Act of 1996 (the ACPA; Pub. L. 104-153, 110 Stat. 1386) was signed into law on July 2, 1996, to ensure that Federal law adequately addresses the scope and sophistication of modern counterfeiting which costs American businesses an estimated $200 billion a year worldwide. Toward that end, the ACPA amended section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), to provide two new tools to fight the importation of counterfeit goods: (1) the seizure, forfeiture, and de-

struction of merchandise bearing a counterfeit mark under 19 U.S.C. 1526(e) (section 1526(e)), as amended by section 9 of the ACPA, and (2) the imposition of a civil fine under 19 U.S.C. 1526(f) (section 1526(f)), a new section of law created under section 10 of the ACPA.

Under section 1526(e), merchandise bearing a counterfeit mark that is seized and forfeited must be destroyed except where the merchandise is not unsafe or a hazard to health and the trademark owner has consented to its disposal by one of several alternative methods (see sections 1526(e)(1),(2) and (3)). This provision ensures that a violator cannot regain possession of the forfeited goods and distribute them in some other manner (including making another attempt to import them at another U.S. port or into another country). Under section 1526(f)(1), a civil fine is assessed against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under section 1526(e). Section 1526(f)(2) provides for a fine for the first seizure in an amount up to the value the imported merchandise would have had if it were genuine, according to the manufacturer's suggested retail price (MSRP). Section 1526(f)(3) provides for a fine for subsequent seizures in the amount of up to twice the value the imported merchandise would have had if it were genuine, according to the MSRP.

On November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231) to amend § 133.25 of the Customs Regulations (19 CFR 133.25) to reflect the ACPA's amendment of 19 U.S.C. 1526. The interim amendments were adopted as a final rule published in the **Federal Register** (63 FR 51296) on September 25, 1998. A final rule document published in the **Federal Register** (64 FR 9058) on February 24, 1999, redesignated § 133.25 as § 133.27.

Under § 133.27 of the Customs Regulations (19 CFR 133.27), CBP may impose a civil fine, in addition to any other penalty or remedy authorized by law, against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under section 1526(e) and § 133.21 of the Customs Regulations (19 CFR 133.21). Under § 133.27(a), the fine imposed for the first violation (seizure) will not be more than the domestic value of the merchandise (as set forth in § 162.43(a)) as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure. Under § 133.27(b), the fine imposed for subsequent violations will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

Upon review of § 133.27, CBP determined that the language of the regulation is inconsistent with the language of section 1526(f). The regulation employs the term "domestic value" (of the merchan-

dise) while the statute does not use that term. Moreover, because the MSRP is exclusive of any sale or markdown of a good at retail, it is usually greater than the good's domestic value. Therefore, setting the maximum amount of a civil fine by means of a formula that includes both the domestic value of the merchandise and the value of genuine merchandise according to the MSRP is confusing and contributes to misunderstanding by both CBP personnel and the public.

A review of the regulatory history indicates that CBP, in using the term "domestic value" in § 133.27 (§ 133.25 when published as a final rule on September 25, 1998), relied on 19 U.S.C. 1606 (section 1606) and § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)). Section 1606 provides that CBP will determine the domestic value of merchandise seized under the Customs laws at the time and place of appraisement. Section 162.43(a) provides that "domestic value" as used in section 1606 means the price for which seized or similar property is freely offered for sale at the time and place of appraisement and in the ordinary course of trade.

While this "domestic value appraisement rule" of section 1606 and § 162.43(a) is applicable in various circumstances involving merchandise seized under the Customs laws, its application is qualified. Under 19 U.S.C. 1600, the procedures set forth in 19 U.S.C. 1602 through 1619, including the use of domestic value as laid out in section 1606, apply to seizures of property under any law enforced or administered by CBP unless such law specifies different procedures. Because section 1526(f) specifies the formula for imposing civil fines for the importation of merchandise bearing a counterfeit mark, the domestic value appraisement rule of section 1606 and § 162.43(a) does not apply.

This conclusion led CBP to publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 39321) on June 7, 2002, which proposed to remove the term "domestic value" from § 133.27, leaving "manufacturer's suggested retail price" as the applicable measure of the penalty. The notice stated that using the MSRP as the measure for a penalty will: (1) result in a formula for setting the maximum civil fine under the regulation that more closely follows the language of the statute; (2) clarify for CBP personnel and the importing public the limit of a civil fine; (3) enhance uniformity in CBP's assessment of fines when merchandise bearing a counterfeit mark is imported and seized; and (4) ensure that the Congressional intent in enacting section 1526(f), i.e., to enhance deterrence of trade in counterfeit goods, will be uniformly served. Deterrence is furthered by the fact that the MSRP of a given article (in this case the genuine article that corresponds to imported merchandise bearing a counterfeit mark) is normally greater than its domestic value (because MSRP excludes discounted sales and markdowns) and a civil fine based on the MSRP will normally be greater.

DISCUSSION OF COMMENTS

The NPRM invited public comment, and CBP received 15 responses by the close of the comment period. Of the 11 specific comments gleaned from the 15 responses, several agreed with CBP's proposal to amend the regulation and with CBP's reasons for doing so. However, some commenters suggested changes to the proposed amendment which are discussed below:

Comment: A commenter proposed that all previously issued fines under 19 U.S.C. 1526(f) should be canceled as they were not issued pursuant to a valid regulation.

Customs response: CBP disagrees. All penalties were issued in a manner consistent with the provisions of the statute, i.e., fine amounts were finally set based on the MSRP. Thus, CBP will not cancel fines issued prior to the effective date of this amendment.

Comment: A commenter proposed that CBP should not issue a penalty notice assessing a fine under 19 U.S.C. 1526(f) where the manufacturer has not determined a MSRP for its genuine product. Another commenter suggested the use of "domestic resale value" when the MSRP of a genuine good is not available.

Customs response: CBP disagrees. CBP believes that in most cases, there will be a readily available MSRP to use in determining a fine under the statute. Occasional problematic situations will be handled on a case-by-case basis, and reasonable alternatives to using a manufacturer's MSRP, such as using the MSRP of a comparable good, will be employed with the assistance of CBP officers experienced in appraising merchandise.

Comment: A commenter proposed that the regulation incorporate sentencing guidelines used for criminal offenses.

Customs response: CBP disagrees. The sentencing guidelines are used by courts to determine sentences in criminal cases. Section 1526(f) provides for a civil fine which Congress sought to be imposed in addition to any other civil or criminal penalty (see section 1526(f)(4)). There is no indication that Congress wanted CBP to employ criminal sentencing guidelines in assessing penalties under section 1526(f).

Comment: A commenter proposed that because a fine under section 1526(f) is issued at the discretion of CBP, CBP officers should be instructed to impose fines only in the most egregious circumstances.

Customs response: CBP disagrees. The statute makes clear that a first offense and subsequent offenses are subject to penalty. There is no indication that Congress contemplated a range of offenses from

minor to serious and a different result for minor offenses, whatever they might be. Further, the legislative history demonstrates strong Congressional resolve to stem the flow of counterfeit merchandise into the United States. Strict enforcement of the civil seizure and fine provisions under the statute are the means to accomplish the deterrence Congress envisioned. Violators will have the chance to submit arguments during the petitioning process for mitigation of the fine.

Comment: A commenter proposed that an importer/petitioner be permitted to challenge CBP's finding that a good bears a counterfeit mark in its petition to mitigate a fine assessed under section 1526(f).

Customs response: CBP does not disagree with this comment. A finding by CBP that a good bears a counterfeit mark forms the basis for a seizure under section 1526(e). A penalty under section 1526(f) follows the seizure under section 1526(e). They are separate proceedings. If a violator can successfully challenge the CBP finding that a good bears a counterfeit mark in the section 1526(e) proceeding, it will not face a section 1526(f) proceeding. In the section 1526(f) proceeding, a petitioner may always raise the issue of whether the good in question bears a counterfeit mark. At that time, CBP may review the validity of the initial finding and may remit the section 1526(f) penalty in appropriate circumstances.

CONCLUSION

Based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments should be adopted without change. CBP notes that with adoption of these amendments to the regulation, CBP will undertake to similarly amend the guidelines it uses to mitigate penalties assessed under section 1526(f). The current guidelines are set forth in T.D. 99-76, 33 Cust. Bull. No. 43, October 27, 1999.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a Asignificant regulatory action as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

This amendment to the regulation will result in the language of the regulation more closely adhering to the language of the governing statute, thus clarifying for the public the maximum amount CBP can assess for a civil fine when merchandise bearing a counterfeit mark is imported and seized. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is therefore certified

that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

LIST OF SUBJECTS IN 19 CFR PART 133

Counterfeit goods, Penalties, Seizures and forfeitures, Trademarks.

AMENDMENT TO THE REGULATIONS

For the reasons stated in the preamble, Part 133 of the Customs Regulations (19 CFR Part 133) is amended as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 continues to read, in part, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * * * *

2. Section 133.27 is revised to read as follows:

§ 133.27. Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine,

according to the manufacturer's suggested retail price in the United States at the time of seizure.

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Approved: July 21, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury,

[Published in the Federal Register, July 24, 2003 (68 FR 43635)]

19 CFR PARTS 24 AND 111

[CBP Decision 03–13]

RIN 1515–AC81

USER FEES

AGENCY: Customs and Border Protection, Department of Homeland Security

ACTION: Final rule.

SUMMARY: This document adopts as a final rule proposed amendments to the Customs Regulations to reflect various legislative amendments to 19 U.S.C. 58c, the Customs user fee statute, including those made by the Miscellaneous Trade and Technical Corrections Act of 1999 and the Tariff Suspension and Trade Act of 2000. The amended regulations set forth the fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, provide for application of a fee to ferries in limited circumstances, and clarify how Customs and Border Protection administers certain user fees. Also, minor conforming changes are made to the regulations pertaining to customs brokers.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT:

Concerning user fees applicable to commercial vessel and aircraft passengers under § 24.22(g): Edward Matthews at (202) 927–0552.

Concerning the various fee payment and information submission procedures under § 24.22: Robert T. Reiley at (202) 927–1504.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 18, 2002, Customs and Border Protection (CBP; the bureau within the new Department of Homeland Security that includes the former U.S. Customs Service) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 11954) proposing to amend Part 24 of the Customs Regulations pertaining to user fees (19 CFR Part 24) and certain related sections of Part 111 pertaining to customs brokers (19 CFR Part 111). The NPRM set forth the bases for the proposed changes to Part 24 as follows: (1) Some proposed changes derived from provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), signed into law on June 25, 1999; (2) one proposed change was based on a provision of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, 114 Stat. 2101), signed into law on November 9, 2000; (3) some proposed changes were based on other statutory provisions that were not reflected in the regulations; (4) some proposed changes were designed to bring the regulations up to date with current administrative practices; (5) and one proposed change was a technical correction. The NPRM provided that the proposed changes to Part 111 were designed to clarify administration of the annual user fee and the permit fees for customs brokers. The changes that were proposed are further discussed below.

Changes Based on the Miscellaneous Trade and Technical Corrections Act of 1999

The Fee Structure

Section 2418 of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), which established user fees for certain services performed by CBP. Paragraph (b)(1) of section 2418 of the Act amended the fee structure set forth under section 58c(a)(5) applicable to passengers arriving in the United States on board commercial vessels or aircraft. Prior to the Act, only one fee applied to these covered passengers under section 58c(a)(5), as follows: $6.50 beginning on January 1, 1994, and applying to passengers arriving from a place outside the customs territory of the United States and $5.00 beginning on October 1, 1997, and applying to passengers arriving from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. The amendment continued the $5 fee applicable to each passenger arriving in the United States aboard a commercial vessel or aircraft from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. This fee, formerly provided for under section 58c(a)(5)(B), is now provided for un-

der section 58c(a)(5)(A). The amendment also imposed, under section 58c(a)(5)(B), a fee of $1.75 per passenger arriving aboard a commercial vessel (not a commercial aircraft) from Canada, Mexico, a United States territory or possession, or an adjacent island. Under the amended statute, no fee applies in the case of passengers arriving aboard commercial aircraft from Canada, Mexico, a United States territory or possession, or an adjacent island.

In the NPRM, CBP proposed to amend § 24.22(g), Customs Regulations (19 CFR 24.22), to conform the regulations to the new fee structure of amended sections 58c(a)(5)(A) and (B).

Procedures for Payment of the New Fees

The NPRM also proposed changes to the Customs Regulations relative to the fee payment procedure. Under the current regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (§ 24.22(g)(3) in the current regulations). These parties must make payment of the collected fees to CBP no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passengers (§ 24.22(g)(4) in the current regulations). Current § 24.22(g)(4) also provides that the quarterly fee payment must be accompanied by a statement that includes the name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment.

The NPRM proposed to amend § 24.22(g)(3) to make clear that the party responsible for collecting the fee must collect a fee when an infant travels without a ticket or travel document. This follows CBP's consistent practice of treating infants as passengers for purposes of the passenger fees. Thus, CBP proposed to add to § 24.22(g)(1) a definition of the term "passenger" making it clear that it includes infants even if the carrier does not charge for their transportation and even if the infant is carried by another passenger (rather than occupying a seat).

Because CBP, since enactment of the Act, has had to administer two fees rather than one, the NPRM also proposed to amend § 24.22(g)(4) to require the following additional information in the statement required under that section: the total number of tickets for which fees were required to be collected, as well as the total number of infants traveling without a ticket or travel document for which fees were required to be collected; the total amount of fees collected and remitted; with respect to vessel fees, the total number of tickets and non-ticketed infants for which fees were required to be collected and the total amount of fees collected; and a breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee).

This additional information is necessary to enable CBP to properly account for the fees now provided for under section 58c(a)(5).

Changes Based on The Tariff Suspension and Trade Act of 2000

The NPRM proposed amendments to §§ 24.22(b)(4)(iv) and 24.22(g)(1) of the Customs Regulations to conform the regulations to a statutory amendment regarding ferries. Section 1457 of the Tariff Suspension and Trade Act of 2000 amended section 58c(b)(1)(A)(iii) to provide an exception to the fee limitation relative to ferries. Prior to this amendment, ferries were excepted from application of the fees under section 58c(a). While this amendment was self-effectuating, effective on November 24, 2000, making ferries commencing operations on or after August 1, 1999, and operating south of 27 degrees latitude and east of 89 degrees longitude subject to the commercial vessel fee of section 58c(a)(1) (and § 24.22(b)(1)) (provided the ferry is of 100 net tons or more) and the $1.75 commercial vessel passenger fee of section 58c(a)(5)(B), the NPRM proposed to set forth the statutory requirement in the Customs Regulations.

Changes Based on Other Statutory Provisions

The NPRM also proposed to amend § 24.22(g) to cover the fee exemption provision set forth in section 58c(b)(1)(A)(iv) and the "one-time only fee" set forth in section 58c(b)(4)(B). These two statutory provisions are not reflected in the current regulation.

The fee exemption provision under section 58c(b)(1)(A)(iv) provides that no fee under section 58c(a)(5) applies to passengers arriving aboard commercial vessels traveling only between ports that are within the customs territory of the United States. The one-time only fee provision of section 58c(b)(4)(B) applies where a fee under section 58c(a)(5) is applicable to passengers arriving aboard a commercial vessel and the voyage is a single voyage involving two or more United States ports. In other words, if a vessel proceeds coastwise to one or more United States ports after its initial arrival from a place outside the United States, the applicable fee is charged only once for each passenger.

The NPRM also proposed to amend § 24.22(g) in order to reflect in § 24.22(g)(1)(iii) the definition of the term "adjacent islands" set forth in 8 U.S.C. 1101(b)(5). Under section 58c(b)(1)(A)(i)(I)(dd), the term "adjacent islands" is given meaning by reference to 8 U.S.C. 1101(b)(5).

Changes Regarding Administrative Practices

The NPRM proposed to amend various provisions of the regulation to reflect current fee payment and other practices, including clarification of the proper addresses for the mailing of payments, requirements for obtaining and using the user fee decal, and use of elec-

tronic and credit card payment options. These amendments were proposed for the following sections of the regulation: § 24.22(b)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vessels (that is, vessels of 100 net tons or more as well as barges and other bulk carriers arriving from Canada or Mexico); § 24.22(c)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vehicles; § 24.22(d) which concerns the fee for the arrival of railroad cars and includes, in paragraph (d)(3), procedures for prepayment of the fee and, in paragraph (d)(4)(ii), procedures for monthly statement filing and fee remittance; § 24.22(e)(1) and (2), which concern, respectively, payment of the fee at the time of arrival of private vessels and private aircraft and prepayment of the fee; § 22.24(g)(4) which covers the procedure for payment of fees for the arrival of passengers aboard commercial vessels and commercial aircraft; § 24.22(h) which concerns the annual customs broker permit fee; and § 24.22(i) which concerns procedures for remittance of, and for submitting information relative to, the fees provided for under § 24.22.

Changes to Make a Technical Correction

The NPRM proposed to correct several erroneous references to § 142.13(c) (19 CFR 142.13(c)) found in paragraphs (a), (c)(2), and (d) of § 24.25, which pertains to statement processing and automated clearinghouse procedures. Section 142.13(c) is currently reserved, and the reference in the above paragraphs of § 24.25 should instead be to § 142.13(b), which pertains to special classes of merchandise.

Conforming Changes to Part 111

Lastly, the NPRM proposed to amend certain sections of Part 111 of the Customs Regulations (19 CFR Part 111) which pertains to customs brokers. Specifically, it was proposed to amend §§ 111.19 and 111.96 to conform to the change made to § 24.22(h) referred to above and to clarify the payment procedure in connection with a national customs broker permit application. In §§ 111.19 and 111.96, there are references to the payment of the annual customs broker permit user fee referred to in § 24.22(h).

COMMENTS

One comment was received in response to the NPRM.

Comment: The commenter recommended the removal from the regulations of the exception found under § 24.22(e)(3)(i) which excepts private vessels less than 30 feet in length (and not carrying any goods that must be declared to CBP) from the fee imposed on private vessels under § 24.22(e)(1). The commenter based the recommendation on the grounds that the regulations require that all private ves-

sels, regardless of tonnage or length, must report their arrival in the United States (see § 123.1(c)) and thus these vessels, including those under 30 feet in length, should not be exempt from the fee.

CBP response: CBP, at this time, is not adopting the commenter's recommendation to remove from the regulations the fee exception for private vessels of less than 30 feet in length. These vessels have been excepted from the fee because CBP incurred no processing costs in clearing them. Now, however, CBP requires the operators of these vessels to call when they arrive but does not inspect all of them. CBP will evaluate the matter and consider whether the exception should be retained, removed, or modified.

CONCLUSION

Based on analysis of the comment received and further review of the matter, CBP believes that the proposed regulatory amendments should be adopted without change.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a Asignificant regulatory action as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

This amendment to the Customs Regulations will conform the regulations to already enacted statutory provisions concerning the collection of fees and will enhance the efficiency of the fee payment and collection process to the advantage of the public. Thus, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the regulatory amendments set forth in this document will not have a significant economic impact on a substantial number of small entities. Moreover, the new reporting requirements in this document impose an insignificant amount of additional annual burden on small businesses. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

The collections of information contained in § 24.22 have previously been approved by the Office of Management and Budget (OMB) under OMB control number 1515–0154 (User Fees). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that lacks a valid control number.

The collections of information in this final rule are in § 24.22(g)(5)(iv) and (v), pertaining to information required in the statement that must accompany a quarterly fee payment relative to

passenger fees. This information is necessary to allow CBP to track and account for the two passenger fees mandated in the Miscellaneous Trade and Technical Corrections Act of 1999. These collections of information are mandatory. The likely respondents and recordkeepers are small businesses or organizations.

The estimated average annual burden associated with the collections of information in this final rule is four hours per respondent/recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the OMB, Attention: Desk Officer for the Department of Homeland Security/Bureau of Customs and Border Protection, Office of Information and Regulatory Affairs, Washington, D.C., 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. Other personnel contributed in its development.

LIST OF SUBJECTS

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Parts 24 and 111 of the Customs Regulations (19 CFR Parts 24 and 111) are amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * * * *

2. Section 24.22 of the regulations is amended by:

a. Revising paragraphs (b)(3), (b)(4)(iv), and (c)(3);

b. In paragraph (d), revising the second sentence of paragraph (d)(3), adding a new sentence at the end of paragraph (d)(4)(ii), and, in the last sentence of paragraph (d)(5), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section";

c. Revising paragraphs (e)(1) and (e)(2);

d. In paragraph (g), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(7) as (g)(3) through (g)(8), adding new paragraph (g)(2), revising newly designated paragraphs (g)(3), (g)(4), and (g)(5), and, at the end of the last sentence of newly designated paragraph (g)(7), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section"; and

e. Revising paragraphs (h) and (i).

The revisions read as follows:

§ 24.22 Fees for certain services.

* * * * * * *

(b) * * *

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a CBP port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* * * *

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) * * *

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Bureau of Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at CBP's website (http://www.cbp.gov). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once the prepayment has been made under this paragraph, a decal will be issued to be permanently af-

fixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) * * *

(3) *Prepayment.* * * * The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, must be mailed to: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* * * *

(ii) * * * Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

* * * * * * *

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to CBP and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet

through the "Traveler Information" links at CBP's website (http://www.cbp.gov). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

* * * * * * *

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5 must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term "territories and possessions of the United States" includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term "passenger" means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term "commercial vessel" includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for "Specified Location" and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands;

(ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place Where Journey Originates (see (g)(1)(iv)):	Fee Status for Arrival From SL:		Fee Status for Arrival From Other Than SL:	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	No fee	No fee	No fee
Other than SL or U.S.	$1.75	No fee	$5	$5
U.S.*	$1.75	No fee	N/A	N/A
U.S.**	$1.75	No fee	$5	$5

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a for-

eign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/CBP Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom CBP inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation "Federal inspection fees" on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United

States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival to the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is processed by CBP, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival to the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by CBP.

(5) *Quarterly payment and statement procedures.* Payment to CBP of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN

46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to CBP. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to CBP, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

* * * * * * *

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to Customs and Border Protection, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a CBP port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of

payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

* * * * * * *

3. Paragraphs (a), (c)(2), and (d) of § 24.25 are amended by removing the reference "§ 142.13(c)" wherever it appears and adding, in its place, the reference "§ 142.13(b)".

PART 111—CUSTOMS BROKERS

4. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

5. Section 111.19 is amended by revising paragraphs (c) and (f)(4) to read as follows:

§ 111.19 Permits

* * * * * * *

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

* * * * * * *

(f) *National permit.* * * *

(4) Attach a receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

* * * * * * *

6. Section 111.96 is amended by revising paragraph (b); in paragraph (c), by removing from the second sentence the words "or upon filing the application for the" and adding in their place the words "or in connection with the filing of an application for a"; and by removing from the same sentence the reference "§ 111.19(f)(4)" and adding in its place "§ 111.19(c)". The revision reads as follows:

§ 111.96 Fees.

* * * * * * *

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing

the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * * * *

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Approved: July 21, 2003
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, July 24, 2003 (68 FR 43624)]

19 CFR PART 101

EXTENSION OF PORT LIMITS OF CHICAGO, ILLINOIS

AGENCY: Customs and Border Protection; Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Bureau of Customs and Border Protection (CBP) by extending the geographical limits of the port of Chicago, Illinois. The change is being proposed as part of CBP's continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATE: Comments must be received on or before September 16, 2003.

ADDRESS: Written comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, (Attention: Regulations Branch), 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the CBP, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

FOR FURTHER INFORMATION CONTACT: Lorraine Henderson, Office of Field Operations, 202–927–1424.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In order to facilitate the clearance of international freight at an intermodal facility in the City of Elwood, Illinois, CBP is proposing to amend § 101.3(b)(1) by extending the port limits of the port limits of the port of Chicago, to include certain parts of the City of Elwood, Illinois, as described below. The proposed extension of the port limits to include the specified territory will provide better service to importers and the rail transportation industry in central Illinois.

CURRENT PORT LIMITS OF CHICAGO, ILLINOIS

The current port limits of Chicago, Illinois, are described as follows in Treasury Decision (T.D.) 71–121 of May 3, 1971:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where State Highway Fifty-Three (52) intersects this Line, thence in a southerly direction along State Highway Fifty-Three (53) to the point where this highway intersects the Dupage County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois- Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to a point where this highway and Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to the place where the highway meets Lake Michigan.

PROPOSED PORT LIMITS OF CHICAGO, ILLINOIS

CBP proposes to extend the port limits of the port of Chicago, Illinois, to include additional territory in the City of Elwood, Illinois so that the description of the port limits would read as follows:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where Illinois Highway Fifty-Three (53) intersects this Line, thence in a southerly direction along Illinois State Highway Fifty-Three (53) to the point where this highway intersects Interstate Highway Fifty-Five (55), thence southwesterly along Interstate Highway Fifty-Five (55) to the point where this highway intersects the north bank of the Kankakee River,

thence southeasterly to the point where the Kankakee River intersects State Highway Fifty-Three (53), thence northeasterly to the point where this highway intersects Interstate Highway Eighty (80), thence easterly to the point where this highway intersects the Cook County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to the point where this highway and the Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to a place where this highway meets Lake Michigan.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, N.W., Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Dated: July 14, 2003
TOM RIDGE,
Secretary,
Department of Homeland Security.

[Published in the Federal Register, July 18, 2003 (68 FR 42650)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 23, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PIPE FITTING NUTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of pipe fitting nuts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of certain pipe fitting nuts under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on February 5, 2003. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin* on February 5, 2003, proposing to revoke HQ 965584, dated September 24, 2002, which involved the classification of certain pipe fitting nuts. One comment was received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs

of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 965584 and any other ruling not specifically identified in order to reflect the proper classification of the pipe fitting nuts pursuant to the analysis set forth in HQ 965939, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

DATED: July 16, 2003

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965939
July 16, 2003
CLA-2 RR:CR:GC 965939 GOB
CATEGORY: Classification
TARIFF NO.: 7307.19.90

FREDERICK L. IKENSON
LARRY HAMPEL
BLANK ROME LLP
900 17th Street, N.W.
Washington, D.C. 20006

RE: Revocation of HQ 965584; Pipe Fitting Nuts

DEAR MESSRS. IKENSON AND HAMPEL:

This letter is in reply to your letter of September 27, 2002, on behalf of Southland Metals, Inc., in which you request that we reconsider HQ 965584 dated September 24, 2002. In reviewing this matter we have taken into consideration the points raised in all of your submissions, as well as those stated in the telephone conference of December 4, 2002.

We have reviewed the classification in HQ 965584 and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 965584, as described below, was published in the *Customs Bulletin* on February 5, 2003.

Your comment is the only comment which we received. In your submission of March 7, 2003, you raise and discuss issues which were raised in your previous submissions. While we believe that some of the issues you have raised are legitimate and very relevant, we are unpersuaded of the correctness of your position. Please see the LAW AND ANALYSIS section for our discussion.

FACTS:

In HQ 965584, we classified certain pipe fitting nuts in subheading 7318.19.00, HTSUS, as: "Screws, nuts, bolts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron and steel: Threaded articles: Other."

In HQ 965584, we stated as follows:

> According to the information provided, the pipe fitting nuts may be imported in a finished condition or, what is termed rough castings requiring some finish machining or threading. The articles are available in several styles which denote the profile and location of the wrench flats on the pipe fitting nut body. Depending on the articles actual application, the article may be referred to as a meter nut, swivel nut, eclipse nut, union nut, regulator nut, or compression nut. The pipe fitting nuts are produced and imported as individual items with distinct part numbers. The schematics submitted for several of the types of nuts show that the pipe fitting nuts are made from material meeting the American Society for Testing and Materials (ASTM) standard A–197. The schematics show that the threads of the pipe fitting nuts are manufactured to meet the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) standard B1.1. Each type of nut has a 'shoulder' or 'flange' inside the rim of the nut, interrupting the threads and forming a 'stop'. This 'stop' is intended to catch an external 'shoulder' or 'flange' of another component with which the pipe fitting nut is intended to be combined.

In your submission of February 22, 2002, you stated in pertinent part as follows:

> Regardless of application, the subject nuts are produced and imported as individual items, each having a distinct part number. That is, *e.g.*, a union nut is produced and imported without regard to the "head" and "tail" with which it ultimately may be used, a swivel nut similarly is produced and imported independent of the swivel with which it may be used, and a compression nut is produced an [sic] imported independent of the "nipple" with which it may be used.

ISSUE:

What is the classification under the HTSUS of the subject pipe fitting nuts?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

7307	Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel:
	Cast fittings:
7307.19	Other:
7307.19.90	Other

* * * * * *

7318	Screws, nuts, bolts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron and steel:
	Threaded articles:
7318.16.00	Nuts
7318.19.00	Other

* * * * * * *

7325	Other cast articles of iron or steel:
	Other:
7325.99	Other
7325.99.10	Of cast iron

EN 73.07 provides in pertinent part as follows:

> This heading covers fittings or iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. This heading **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore, e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars * * *
>
> The connection is obtained:
> —by screwing, when using cast iron or steel threaded fittings;
>
> * * * * * * *
>
> This heading **excludes**:
>
> * * * * * * *
>
> (b) Bolts, nuts, screws, etc., suitable for use in the assembly of tube or pipe fittings (**heading 73.18**).
> [All emphasis in original.]

EN 73.18 provides in pertinent part as follows:

> **Nuts** are metal pieces designed to hold the corresponding bolts in place. They are usually tapped throughout but are sometimes blind. The heading includes wing nuts, butterfly nuts, etc. Lock nuts (usually thinner and castellated) are sometimes used with bolts. [Emphasis in original.]

EN 73.25 provides in pertinent part as follows:

> This heading covers **all cast** articles of iron or steel, not elsewhere specified or included.
>
> * * * * * * *
>
> This heading **does not cover** castings which are products falling in other headings of the Nomenclature (e.g., recognisable parts of machinery or mechanical appliances) or unfinished castings which require further working but have the essential character of such finished products.
> [All emphasis in original.]

Your primary claim is that the subject goods are classified in subheading 7318.16.00, HTSUS. Alternatively, you claim that the goods are classified in subheading 7325.99.10, HTSUS. Classification in heading 7307, HTSUS, has also been considered. Because heading 7325, HTSUS, covers all cast articles of iron or steel not elsewhere specified or included (see EN 73.25), the goods will be provided for in heading 7325, HTSUS, only if they are described in that heading and if they are not provided for in heading 7307 or heading 7318.

Heading 7318

In HQ 965584 we classified the pipe fitting nuts in subheading 7318.19.00, HTSUS, based upon the finding that, "[u]nder GRI 2(a), the castings qualify as blanks having the essential character of other threaded articles of the type classifiable in subheading 7318.19.00, HTSUS." We now believe that this classification is incorrect. In the consideration of HQ 965584, we gave too much emphasis to whether the pipe fitting nuts had the essential character of other threaded articles within the meaning of subheading 7318.19.00, HTSUS, and insufficient emphasis to the consideration of whether the pipe fitting nuts are goods described in heading 7318, HTSUS. As the analysis below indicates, we do not believe that the pipe fitting nuts are of the same class or kind as the goods enumerated in heading 7318, HTSUS.

The subject pipe fitting nuts are designed differently than common nuts. These pipe fitting nuts have an internal bearing surface 'shoulder' or 'flange' which would stop an article being threaded through it from emerging at the opposite end of the pipe fitting nut. This internal shoulder precludes the pipe fitting nut from being used with a bolt, screw or stud. The pipe fitting nut operates by placing a part which has an external shoulder inside the pipe fitting nut. The external shoulder of the internal part contacts the internal shoulder of the pipe fitting nut preventing the internal part from sliding all the way through the pipe fitting nut. A third component with external threads then goes over the internal part and screws into the pipe fitting nut which locks the internal and external shoulders, squeezing them together. Therefore, the clamping force of the pipe fitting nut is by the internal shoulder.

A common nut operates differently. The clamping force of the common nut is created by the outside face (external bearing surface) of the nut pressing against a washer or the surface of the article being assembled. The compression created by the face of the common nut holds the corresponding bolt, screw, or stud in place. The common nut performs its fastening function by holding the article in place by the compression which the exterior face creates with the assistance of the threaded bolt, screw, or stud. Therefore, the pipe fitting nut and the common nut have different design features, different intended usages, different industry groups, are marketed in different departments and have no commercial interchangability.

Accordingly, we find that the pipe fitting nuts are not described in heading 7318, HTSUS. It therefore follows that the pipe fitting nuts are not classified in subheading 7318.16.00, HTSUS, as claimed by you, or in subheading 7316.19.99, HTSUS, as we determined in HQ 965584.

Heading 7307

With respect to classification of the goods in heading 7307, HTSUS, we find that certain of the language of EN 73.07 is critical to this issue. That language provides that heading 7307, HTSUS, " * * * covers fittings of iron or steel, *mainly used for connecting the bores of two tubes together* * * * " [Emphasis supplied.] We believe that the important inquiry is whether the subject pipe fitting nuts connect the bores of two tubes together. Documentation in the file, including illustrations, indicates that the pipe fitting nuts serve to connect other pipe fitting components, e.g., in the case of union nuts, the nuts serve to connect the head and the tail components which are in turn connected to the two pipes.[1] The documentation of record leads us to conclude that the subject pipe fitting nuts are used to connect the bores of two tubes together. Therefore, we find that the subject pipe fitting nuts are within the scope of the description provided in EN 73.07, above. Accordingly, we find that the subject pipe fitting nuts are provided for in heading 7307, HTSUS. We find that they are classified in subheading 7307.19.90, HTSUS, as: "Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel: Cast fittings: Other: Other."

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[1] For example, *The Complete Illustrated Guide to Everything Sold in Hardware Stores* by Steve Ettlinger (1998; p. 516) describes the use of unions as follows:

> **Description:** An assembly of one (sweat) or three (threaded) hex nuts. Its two halves are separated and screwed onto the ends of the pipes to be joined, then the larger, central hex nut is tightened down to join them. **Use:** Connecting pipe sections of similar size that are expected to be disassembled or that are being fit into a position between two fixed pipes.

As you have consistently noted, heading 7307, HTSUS, does not include "parts" of pipe fittings. It is our determination in the analysis above that the subject pipe fitting nuts are provided for in heading 7307, HTSUS, as pipe fittings. We do not believe, and we do not find, that the subject pipe fitting nuts are "parts" of pipe fittings.

Heading 7325

Based upon our determination that the pipe fitting nuts are classified in subheading 7307.19.90, HTSUS, they are not described or classified in heading 7325, HTSUS.

HOLDING:

The pipe fitting nuts are classified in subheading 7307.19.90, HTSUS, as: "Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel: Cast fittings: Other: Other."

EFFECT ON OTHER RULINGS:

HQ 965584 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PRINTED CARDS BEARING A GREETING, MESSAGE OR ANNOUNCEMENT AND PRINTED CARDS CONTAINING NO TEXT

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of printed cards bearing a greeting, message or announcement and printed cards containing no text.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs & Border Protection (CBP) is revoking three ruling letters and modifying six ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of cards bearing a greeting, message or announcement and printed cards containing no text. CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on May 21, 2003, in Volume 37, Number 21, of the CUSTOMS BULLETIN. CBP received two comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 572–8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by Title VI, notice proposing to revoke Headquarters Ruling Letter (HQ) 089218, dated September 12, 1991, New York Ruling Letter (NY) D88805, dated March 11, 1999 and NY E86598, dated September 14, 1999, to modify NY D88577, dated March 4, 1999, NY E80955, dated April 30, 1999, NY E80406, dated April 22, 1999, NY 857929, dated November 15, 1990, NY D88802, dated March 11, 1999 and NY D88582, dated March 5, 1999, and to revoke any treatment accorded to substantially identical merchandise was published in the May 21, 2003, CUSTOMS BULLETIN, Volume 37, Number 21. CBP received two comments.

In NY D88577, NY D88805, NY 857929, NY D88802 and NY E86598 Customs held that printed cards bearing no text were classified under heading 4817, HTSUS, which provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery." In HQ 089218, we held that printed cards with no text were classified under heading 4909, HTSUS, as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. We now find that the cards

with no text do not satisfy the terms of heading 4817, HTSUS, or heading 4909, HTSUS, and are properly classified under heading 4911, HTSUS, as other printed matter.

Additionally, in NY D88582 CBP classified a card printed with a picture of the Kelmscott House, with a caption identifying it as the home of craftsman, poet and socialist William Morris, under heading 4817, HTSUS. In NY E80406, CBP classified cards with historical information on their "rear faces" about a carpet displayed on the front of the cards under heading 4817, HTSUS. In NY E80955, CBP classified cards with a flower design captioned with the identifying word "poppy" under heading 4817, HTSUS. We now find that the text on those cards constitutes a message and that the cards are correctly classified under heading 4909, HTSUS.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed **or** illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

Arguments presented in the comments that were considered prior to the proposed notice are not addressed again in this document. One new argument presented is that the division of heading 4909, HTSUS, into parts is irrelevant in this case and that the distinction between the two parts is between *postcards* on the one hand and *cards* on the other, and that there is no requirement in the plain meaning of the provision that the personal greeting, message or announcement be in the form of written text. However, in our opinion, as set forth in the attached rulings, heading 4909 is clear and this comment has not persuaded us of an alternative reading of the heading.

In the proposed notice we stated that in addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures

or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

One comment suggests that Note 4 to Chapter 49 establishes an intent to exclude *only* "printed pictures or illustrations not bearing a text" from heading 4901, HTSUS, and not other headings of Chapter 49, HTSUS, under the rule of statutory construction *expressio unius est exclusio alterius* (one thing is the exclusion of another). We agree with the comment that the first part of Note 4 to Chapter 49 has no bearing on heading 4909, but again we find that the last part of the note is relevant as it demonstrates that heading 4911 encompasses goods without text. Heading 4911 is the correct provision for such cards.

As stated in the notice of proposed revocation, this notice covers any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 089218, dated September 12, 1991, NY D88805, dated March 11, 1999 and NY E86598, dated September 14, 1999, modifying NY D88577, dated March 4, 1999, NY E80955, dated April 30, 1999, NY E80406, dated April 22, 1999, NY 857929, dated November 15, 1990, NY D88802, dated March 11, 1999 and NY D88582, dated March 5, 1999 and revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966395, HQ 966398, HQ 966415, HQ 966416, HQ 966417, HQ 966418, HQ 966419, HQ 966420 and HQ 966421, which are attached to this document. Additionally, pursuant to 19 U.S.C.

1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: July 17, 2003

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966395
July 17, 2003
CLA-2 RR:CR:TE 966395 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40; 4909.00.4040

MR. BRUCE R. LANG
SPECIALTIES SALES, INC.
8940 N.W. 2nd Street
Coral Springs, FL 33071

RE: Revocation of HQ 089218; Classification of cards; Heading 4909; Heading 4911

DEAR MR. LANG:

On September 12, 1991, Customs (now Customs & Border Protection ("CBP")) issued Headquarters Ruling Letter (HQ) 089218 to you concerning the classification of "greeting" cards and the components that make up the cards. In that ruling, CBP classified illustrated cards, which may or may not have a greeting, under heading 4909 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.

For the reasons set forth below, we find that HQ 089218 was incorrect and that the proper classification of the cards *without a greeting* is under heading 4911, HTSUS, as other printed matter. We further find that HQ 089218 erroneously held that the components that make up the cards were classified separately, pursuant to GRI 1, HTSUS, in heading 3923, HTSUS, heading 2703, HTSUS, heading 1209, HTSUS and heading 0601, HTSUS. The unassembled or incomplete cards are correctly classified under headings 4909, HTSUS or 4911, HTSUS, pursuant to GRI 2(a).

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in HQ 089218 reads as follows:

> The article under consideration consists of a card which is folded over on itself and glued. There is a seed or bulb packet in between the glued sides of the card.

The plastic blister, which holds a flower pot and a peat pellet, fits into a notch in the card, with the ears of both the front and back halves of the plastic blister fitting between the glued halves of the card. The card is illustrated, as appropriate to the seed/bulb, and may contain a two word greeting on the front. The illustration may be a snow covered fir tree in the case of the card which accompanies the fir tree seeds. Other illustrations appear on other cards. These cards may be imported with all the components fully assembled ready for retail state. These cards may be imported with all its components present in an unassembled condition. Such cards with unassembled components will be assembled prior to being marketed for retail sale. Some of the cards may be imported incomplete with components to be added subsequent to importation and assembled before the "card" is put up for retail sale. One or more components, e.g. seed and/or peat pellet, may be imported together or separately and assembled with other components or groups of components subsequent to importation and before the "card" is ready for retail sale.

ISSUE:

Are the cards classifiable under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement or under heading 4911, HTSUS, as other printed matter?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christen-

> ings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed **or** illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

The cards in the instant case present three scenarios. In some instances, the cards contain a short greeting. Those cards clearly satisfy the terms of heading 4909, HTSUS. Most of the "printing" on the cards, however, consists of directions related to growing a tree/plant. We consider this information to be consistent with the definition of a message in that it transmits and or conveys knowledge or information. Thus, those cards are also classified under heading 4909, HTSUS. On the other hand, the illustrated cards "**not bearing a text**" do not satisfy the terms of heading 4909, HTSUS, and are classifiable in heading 4911, HTSUS, as other printed matter.

Finally, we note that in HQ 089218 CBP erroneously found that the components that make up the cards were separately classified in heading 3923, HTSUS, heading 2703, HTSUS, heading 1209, HTSUS and heading 0601, HTSUS, pursuant to GRI 1, HTSUS, stating:

> We have concluded that the article under consideration is merely a group of separate components which are packaged together as a novelty item.
>
> Based thereon, we have concluded that the components are separately dutiable in accordance with GRI 1 whether they are fully or partially assembled, unassembled, whether or not imported together and regardless of the effort subsequent to importation needed to place them in condition ready for retail sale.

GRI 2(a) reads:

> Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to the article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The correct application of the GRI's mandates that the assembled, finished cards are classified pursuant to GRI 1, HTSUS, under headings 4909 or 4911, as discussed above. However, the components that make up the unassembled cards, if entered together, have the essential character of the complete or finished cards and are therefore classifiable in headings 4909 or 4911, as appropriate, pursuant to GRI 2(a), HTSUS. If the card components come in unassembled and incomplete, we would classify them following the same GRI 2(a) principles. For purposes of this ruling, we as-

sume that the incomplete or unassembled cards have the essential character of the complete or finished cards.

HOLDING:

HQ 089218 is REVOKED. The illustrated cards that do *not* contain a personal greeting, message or announcement are classified under heading 4911, HTSUS, which provides for "Other printed matter, including printed pictures and photographs."

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

The illustrated cards bearing a written greeting, message or announcement are classified under subheading 4909.00.4040, HTSUS. They are dutiable at 0.5 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966398
July 17, 2003
CLA-2 RR:CR:TE 966398 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40; 4909.00.4020

MS. JOY BUTLER
HENRY-BUTLER PARTNERSHIP
8–8a King Street
Mold, Flintshire CH7 1LA

RE: Modification of NY D88577; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MS. BUTLER:

On March 4, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88577 to you concerning the classification of paper note cards and greeting cards from England. In that ruling, CBP classified the cards with written messages printed on them under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards without a written greeting, message or announcement were classified under subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88577 was incorrect, in part, and that the proper classification of the cards without a written greeting is under heading 4911, HTSUS, as other printed matter.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade

Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in NY D88577 reads as follows:

> The first sample, identified as "Chequered Rose," is a folded paper note card measuring about 5 1/4″ square in the closed position. Its face is printed with a design, while its interior is totally blank, suitable for written correspondence. The card is permanently mounted within a die-cut "windowed" cover consisting of an outer layer of stiff opaque paper and an inner layer of translucent paper. The item is put up for retail sale, together with a suitable paper envelope, in a clear cellophane packet
>
> The second sample, identified as "Grassland," consists of a folded sheet of stiff translucent paper, 5 1/2″ square in the closed position. A decorative 1 3/8″ x 2″ photograph is affixed to its face, while a 3 3/4″ square piece of blank writing paper is affixed to an inner surface. This item is packed with an envelope as described above.
>
> The third sample, identified as "Painted Faces," is a folded black paper card measuring 4″ x 8 1/4″ in the closed position. A 3″ x 7 1/2″ sheet of blank, off-white writing paper is affixed to an interior surface. The face of the card incorporates slits which hold a 1 3/4″ x 7″ decorative, design-printed strip of paper (which can be removed from the card and used as a bookmark, if desired). Again, this item is packed with an envelope as described above.
>
> The fourth sample, identified as "Three Wishes," is a folded paper card measuring 5 1/2″ square in the closed position. Its face has been printed with the words, "I have just three wishes and they are all for you." The face of the card is also decorated with a clear plastic cover incorporating a small photo, bits of metal and glitter. The interior is blank. This item is packed with an envelope as described above.

ISSUE:

Are the blank cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Moreover, the pictorial matter on the cards in question forms the principal feature of the cards and is not "merely incidental" to their use. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may in-

corporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires printed cards to include some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, since the "Chequered Rose," "Grassland" and "Painted Faces" cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Therefore, the cards fall in heading 4911, HTSUS, as other printed matter.

HOLDING:

NY D88577 is MODIFIED. The "Chequered Rose," "Grassland" and "Painted Faces" cards are classified under heading 4911, HTSUS, as other printed matter.

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography and are not over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966415
July 17, 2003
CLA-2 RR:CR:TE 966415 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40

MR. DAVID KNIGHT
DIRECTOR
WILLOW DESIGN & PUBLISHING LIMITED
Cootehall, Boyle, Co.
Roscommon
Ireland

RE: Revocation of NY D88805; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MR. KNIGHT:

On March 11, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88805 to you concerning the classification of note cards from Ireland. In that ruling, CBP classified the note cards with no text under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88805 was incorrect, and that the proper classification of the blank note cards is under heading 4911, HTSUS, as other printed matter.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise in NY D88805 reads as follows:

> The samples are paper note cards or correspondence cards, each with a matching accompanying paper envelope, packaged for retail sale in a sealed clear cellophane wrapper.
>
> They contain no printed messages, personal greetings, or announcements, and are decorated on the front face with printed reproductions of "thoughtfully selected and hand picked (flowers and leaves of) the fields and byways of Ireland".
>
> The interior faces are blank, and are thus suitable for written correspondence and/or greeting. The rear face of each card is suitably marked with its country of origin, Ireland. The two samples are designated "Code N1" and "Code N7".

ISSUE:

Are the note cards with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

(2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed **or** illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.*

Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs." In this case, since the note cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Consequently, the cards fall in heading 4911, HTSUS, as other printed matter.

HOLDING:

NY D8805 is REVOKED.

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966416
July 17, 2003
CLA-2 RR:CR:TE 966416 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40

MS. EMMA EUSTACE
BIG LEAP DESIGNS LIMITED
The Robe Small Business Center
Kilmaine Road
Ballinrobe, Co. Mayo
Ireland

RE: Modification of NY D88802; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MS. EUSTACE:

On March 11, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88802 to you concerning the classification of a note cards from Ireland. In that ruling, CBP classified the note card with no text under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards. We classified the note card with the caption "Yo dude" on the face of the card under subheading 4909.00.4020, HTSUS.

For the reasons set forth below, we find that NY D88802 was incorrect, in part, and that the proper classification of the blank note card is under heading 4911, HTSUS, as other printed matter. Classification of the note card with a caption was correct.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise in NY D88802 reads as follows:

> The first sample (marked "S31") is a folded paper note card packed together with a suitable paper envelope in a clear cellophane packet. The face of the card is printed with a picture of a cartoon-style figure, while the interior is blank, suitable for written correspondence.
>
> The second sample (marked "A4") is a similar card/envelope set, except that in addition to a cartoon figure, the face of the card bears the printed caption, "Yo dude." The interior of the card is again blank.

ISSUE:

Is the note card with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The card in question clearly does not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the card is not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the card is not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

(2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed **or** illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, since the "S31" style note card does not have a written greeting, message or announcement, it is precluded from classification in heading 4909, HTSUS. Therefore, the card falls in heading 4911, HTSUS, as other printed matter.

HOLDING:

NY D88802 is MODIFIED.

We do not have sufficient information to provide you with the tariff classification of the "S31" notecard at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966417
July 17, 2003
CLA-2 RR:CR:TE 966417 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40

MR. DONALD J. SIEGEL
HOFUN TANGLIN
Post Office Box 0132
Singapore 9124

RE: Modification of NY 857929; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MR. SIEGEL:

On November 15, 1990, Customs (now Customs & Border Protection) issued New York Ruling Letter (NY) 857929 to you concerning the classification of a "watercolor note card" with a blank interior, a "watercolor note card with die cut" and a "matted print."

In that ruling, CBP classified the note card under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards. We classified the note card with die cut as a greeting card under subheading 4909.00.4020, HTSUS, and the matted card under subheading 4911.91.3000, HTSUS, as other printed matter.

For the reasons set forth below, we find that NY 857929 was incorrect, in part, and that the proper classification of the blank note card is under heading 4911, HTSUS, as other printed matter. Classification of the note card with die cut and the matted print was correct.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise in NY 857929 reads as follows:

> The first item, designated a "watercolor note card," is a single-fold card with a blank interior and a printed, color reproduction of original artwork on its face. It is packed, together with an envelope, in a cellophane pouch.
>
> The second item, a "watercolor note card with die cut," is similar to the first, except that its cover incorporates a design-integrated die-cut flap, underneath of which is an accordion-fold, pull-out section printed with a message ("Greetings from Singapore") and several miniature pictures. This card is also packed with an envelope in a cellophane pouch.
>
> The third item, a "matted print," is a 12 x 18 cm sheet of paper bearing a lithographically printed reproduction of a work of art (watercolor picture). It is mounted in a paperboard frame having a thickness of about 2.65 mm.

ISSUE:

Is the watercolor note card with a blank interior classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The card in question clearly does not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the card is not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the card is not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or in-

formation. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

(2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, since the watercolor note card does not have a written greeting, message or announcement, it is precluded from classification in heading 4909, HTSUS. Therefore, the card falls in heading 4911, HTSUS, as other printed matter.

HOLDING:

NY 857929 is MODIFIED.

We do not have sufficient information to provide you with the tariff classification of the watercolor note card at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966418
July 17, 2003
CLA-2 RR:CR:TE 966418 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40; 4909.00.40

MR. GEOFFREY WITTS
STONE MARKETING LIMITED
4 Ashby's Yard
Medway Wharf Road
Tonbridge, Kent TN9 1RE
England

RE: Modification of NY E80955; Classification of cards; Heading 4909; Heading 4911; Heading 4817

DEAR MR. WITTS:

On April 30, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) E80955 to you concerning the classification of paper note cards and greeting cards from England. In that ruling, CBP classified cards with written greetings, messages or announcements under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with no wording on them or a single identifying word were classified under subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY E80955 was incorrect, in part, and that the proper classification of the cards without a written greeting is under heading 4911, HTSUS, as other printed matter. The correct classification of the cards with a single identifying word is under subheading 4909.00.4040, HTSUS.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in NY E80955 reads as follows:

> Five samples were submitted and will be retained for reference. Each is a folded paper card, about 4 1/4″ x 6 1/8″ in the closed position, individually packed for retail sale with a suitable paper mailing envelope in a sealed cellophane packet. The various styles represented by the samples differ in the nature and extent of their printed content, as indicated below:

Style no.	*Face*	*Interior*
NKV2	Heart design; no wording	Blank
NK1	Flower design, captioned With identifying word "poppy"	Blank
NKBD1	Picture followed by the words, "Happy Birthday"	Blank

Style no.	*Face*	*Interior*
NKCH19	Snowscape design; no wording	The Words, "Season's Greetings"
NKCH2	Bird design, followed by the words, "Merry Christmas"	Blank

The back of each card is largely blank, but the lower portion is printed with a bar code, style number, your company's name and address, design/copyright information, and country of origin ("Printed in England").

ISSUE:

Are the cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Moreover, the pictorial matter on the cards in question forms the principal

feature of the cards and is not "merely incidental" to their use. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

The cards bearing the greetings "Happy Birthday", "Season's Greetings" and "Merry Christmas" clearly fall within heading 4909, HTSUS. Additionally, the cards with a flower design captioned with the identifying word "poppy" is a message in that it transmits and/or conveys knowledge or information by identifying the illustrations depicted on the cards. Accordingly, we find that such cards are also classifiable under heading 4909, HTSUS.

The cards that contain no text are classifiable under heading 4911, HTSUS, as other printed matter.

HOLDING:

NY E80955 is MODIFIED. Style NK1 containing a caption with the identifying word, "poppy", is classifiable under subheading 4909.00.4040, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.5 percent *ad valorem*.

Style NKV2 bearing no text is classifiable under heading 4911, HTSUS, as other printed matter. We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography and are not over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966419
July 17, 2003
CLA-2 RR:CR:TE 966419 RH
CATEGORY: Classification
TARIFF NOS: 4911.91.20; 4911.91.40

MS. ANNE FONTENOY
2 ROZEL TERRACE
Church Road
Croydon, Surrey CRO 1SG
England

RE: Revocation of NY E86598; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MS. FONTENOY:

On September 14, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) E86598 to you concerning the classification of paper note cards from England. In that ruling, CBP classified the cards without a written greeting, message or announcement under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY E86598 was incorrect, and that the proper classification of the cards without a written greeting is under heading 4911, HTSUS, as other printed matter.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in NY E86598 reads as follows:

> Two samples identified as "hand-made greeting cards" were submitted and will be retained for reference. Each is a folded paper note card, individually packed, together with a suitable paper envelope, in a sealed plastic bag. The face of each card bears a picture or design said to have been produced by airbrushing with ink using hand-cut stencils. The interiors are blank, suitable for written correspondence.

ISSUE:

Are the blank cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, since the cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Therefore, the cards fall in heading 4911, HTSUS, as other printed matter.

HOLDING:

NY E86598 is REVOKED.

We do not have sufficient information to provide you with the tariff classification of the note cards at the 10-digit level. If the cards are printed by lithography and are not

over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966420
July 17, 2003
CLA-2 RR:CR:TE 966420 RH
CATEGORY: Classification
TARIFF NOS: 4909.00.4020; 4909.00.4040

MS. BONNIE JAY
TURKISH GREETINGS
2121 W. Spring Creek Parkway
Suite 214
Plano, Texas 75023

RE: Modification of NY E80406; Classification of cards; Heading 4909; Heading 4911; Heading 4817

DEAR MS. JAY:

On April 22, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) E80406 to you concerning the classification of "carpet cards" from Turkey. In that ruling, CBP classified the cards with messages printed on them under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with historical information displayed on their "rear faces" were classified under subheading 4817.20.4000, HTSUS, as correspondence cards.

For the reasons set forth below, we find that NY E80406 was incorrect, in part, and that the proper classification of all of the cards is under heading 4909, HTSUS.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in NY E80406 reads as follows:

> [The sample] is a folded paper or paperboard card, imported together with an appropriately sized mailing envelope. The front face of the card is decorated with a miniature woven carpet permanently attached by gluing. (The carpet cannot be removed without the probability of damaging exposed threads on its reverse.)
>
> The interior two faces of the folded card are blank, and are suitable, and intended, for the writing of correspondence.

> The rear face contains historical information about the "Kayseri Wool Carpet", presumably of which the miniature on the front face of the card is an example.
>
> * * * * * * *
>
> Cards like the sample in all material respects, but also having messages printed on them, will also be imported.

ISSUE:

Are the cards with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards or under heading 4911, HTSUS, as other printed matter?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery." Heading 4911, HTSUS, provides for "Other printed matter, including printed pictures and photographs."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets of in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stam0p or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cares.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards do not meet the terms of heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed **or** illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

The cards at issue contain historical information about the "Kayseri Wool Carpet" that is displayed on the front of the cards. We consider this information to be consistent with the definition of a message in that it transmits and/or conveys knowledge or information about the article depicted on the card. Moreover, we note that while a message is generally displayed on the face or interior of a card, neither the heading nor legal notes preclude the message from appearing on the back of the card. Thus, we find that the cards in question bear a message and are classifiable under heading 4909, HTSUS.

HOLDING:

NY E80406 is MODIFIED. The "carpet cards" containing a message in the form of historical information on the back of the cards are classified under subheading 4909.00.4040, HTSUS, as cards bearing a personal greeting, message or announcement.

The "carpet cards" bearing a written greeting, message or announcement on the face or interior of the cards were correctly classified under subheading 4909.00.4020, HTSUS.

The cards are dutiable at the general column one rate at 0.5 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966421
July 17, 2003
CLA-2 RR:CR:TE 966421
CATEGORY: Classification
TARIFF NO: 4909.00.4040

MR. RICHARD BARSON
WORLD'S GREATEST MINDS, LTD.
15 New Bond Street
Bath BA1 1BA
England

RE: Modification of NY D88582; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817

DEAR MR. BARSON:

On March 5, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88582 to you concerning the classification of paper note cards from England. In that ruling, CBP classified the cards with written quotations attributed to famous writers printed on them under subheading 4909.00.4040 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with a caption identifying an illustration were classified under subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88582 was incorrect, in part, and that the proper classification of all of the cards is under heading 4909, HTSUS.

Pursuant to section 625(c),Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of HQ 089218 was published on May 21, 2003, in Vol. 37, No. 21 of the CUSTOMS BULLETIN. CBP received two comments. A discussion of the comments will be set forth in the General Notice of Revocation and Modification, which will be published in the CUSTOMS BULLETIN on August 6, 2003.

FACTS:

A description of the merchandise at issue in NY D88582 reads as follows:

> The first sample ("A5") is a folded paper note card packed in a cellophane packet together with a suitable paper envelope. The face of the card is printed with a pic-

ture of Kelmscott House, with a caption identifying it as the home of craftsman, poet and socialist William Morris. The interior of the card is blank, suitable for written correspondence.

The second and third samples are also folded paper card/envelope sets, individually packed in cellophane packets. However, while these cards again feature blank interiors, their faces are prominently printed with quotations attributed to famous writers. Card "W14" reads, "It is never too late to be what you might have been" (—George Eliot). Card "B11" reads, "Pleasure's a sin and sometimes sin's a pleasure" (—Lord Byron). It appears that if either of these cards is thoughtfully and appropriately sent to a recipient in a particular situation or context, the printed quotation may serve as a kind of personal message similar to one found on a conventional greeting card.

ISSUE:

Are the cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

> This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, **excluded**.
>
> These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.
>
> **Letter cards** are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.
>
> **Plain postcards** do not fall in this heading **unless** they contain printed provision for the address or stamp or other indications of their use.
>
> **Correspondence cards** do not fall in this heading **unless** they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in **heading 48.23**, as are, generally, unprinted visiting cards.
>
> The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS (before the semicolon). Furthermore, the cards are not characteristic of

any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

> **greeting**—the act or words of a person who greets [at 800];
> See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";
>
> **message**—any communication, written or oral, sent between persons [at 1130];
>
> **announcement**—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * * * *

> (2) **Christmas, New Year, birthday or similar cards.** These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, **whether or not illustrated**, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations **not bearing a text**, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, the "A5" cards are printed with a picture of the Kelmscott House and contain a caption identifying it as the home of craftsman, poet and socialist William Morris. We consider this information to be consistent with the definition of a message in that it transmits and or conveys knowledge or information by identifying an illus-

tration. Accordingly, we find that the cards bear a message and are classifiable under heading 4909, HTSUS.

HOLDING:

NY D88582 is MODIFIED. The "A5" cards are classified under heading 4909.00.4040, HTSUS, as cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards are dutiable at the general column one rate at 0.5 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN RUBBER OR BASE METAL COMPONENT PARTS OF AUTOMOTIVE SEAT ADJUSTER ASSEMBLIES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to the tariff classification of certain rubber or base metal component parts of automotive seat adjuster assemblies under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling and revoke another and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of certain rubber or base metal component parts of automotive seat adjuster assemblies. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 5, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW, Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrange-

ments to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C.§ 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify New York Ruling Letter ("NY") H88184 and to revoke NY H88186, both dated March 4, 2002. NYs H88184 and H88186 are set forth as "Attachment A" and "Attachment B", respectively, to this document.

Although in this notice Customs is specifically referring to two rulings, NYs H88184 and H88186, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. In this respect two additional notices are being published in this issue of the *Customs Bulletin* which identify other proposed modification and/or revocation rulings on this merchandise. One notice proposes to modify Headquarters Ruling Letter ("HQ") 962046 and to revoke HQ 961652 and NY 815567 pursuant to the analysis in proposed HQ 966201, HQ 966450 and HQ 966449, respectively. The second notice proposes to modify NY H88185, NY H88183 and NY H88554 pursuant to the analysis in proposed HQ 965970, HQ 966001, and HQ 966113, respectively. Customs has undertaken reasonable efforts to search existing databases and, other than as iden-

tified above, no other rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice or the other two notices, other than the referenced rulings (see above), should advise Customs during this notice period. All of the above-identified rulings will be he subject of one final notice. Any comments received on one notice will be considered as comments on all three notices.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS or other relevant statutes. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY H88184 and revoke NY H88186 as they pertain to the classification of certain rubber or base metal component parts of automotive seat adjuster assemblies, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966036 (see "Attachment C" to this document). Additionally, Customs intends to modify or revoke the rulings identified in the other two notices in this *Customs Bulletin* on this merchandise, and any other ruling not specifically identified and the other notices.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 16, 2003

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H88184
February 27, 2002
CLA-2-87:RR:NC:MM:101 H88184
CATEGORY: Classification
TARIFF NO.: 8302.30.3060, 8708.29.5060

MR. MITCHELL NERIAH
MITCHELL NERIAH CUSTOMS CONSULTING SERVICES
415 S. Prospect Ave., Suite 110
Redondo Beach, California 90277

RE: The tariff classification of *Various Components ("FOOT", "PLATE", "LINK", and "DAMPER") of Seat Adjusting Mechanisms and Seats Used in Motor Vehicles* from Japan

DEAR MR. NERIAH:

In your letter dated January 30, 2002 you requested a tariff classification ruling on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech).

You submitted photographs of various components of seat adjusting mechanisms and seats used in motor vehicles. You state that the complete seat adjusting mechanism is referred to by IB Tech as a "Full Seat Device." The Full Seat Device is the entire base metal assembly upon which the seat is mounted, and allows for the seat occupant to adjust the seat position forward or reverse, adjust the seat back recline position, and in some cases, raising or lowering seat height in relation to the auto floor. The seat back and the seat bottom are attached to the Full Seat Device, and the Full Seat Device is fastened to the floor by a bracket.

1. The first item, *"FOOT"*, is a stamped metal bracket, used to secure and attach the Full Seat Device to the automobile floor. It has pre-drilled holes for bolts. The Foot is secured to the bottom of the Full Seat Device on one end (to the bottom of the lower slide rail), and to the automobile floor on the other. You state that the Foot is specifically designed for and used solely with automobile seats.
2. The second item, *"PLATE"*, is a single stamped piece of base metal with three pre-drilled holes. It is placed on the bottom of a lower slide rail of the Full Seat Device, and is used as a support and distance spacer when attaching the Foot to the Full Seat Device. Three bolts with nuts are used to fasten the Foot to the lower slide rail and Full Seat Device. The Plate is specifically designed to fit within the lower slide rail, with its pre-drilled holes aligning with holes in the slide rails and Foot. The Plate functions to support and protect the lower rail in the Full Seat Device from damage which may occur from attachment to the Foot. It prevents the slide rail from bending, which would prevent the seat from sliding forward or reverse. You state that the Plate is used solely with the automobile seat models for which it is designed.
3. The third item, *"LINK"*, is a base metal bracket used in the Full Seat Device to adjust the height in relation to the auto floor by electric motor. The Link is fastened to the slide rail by bolts on one end. On the other end, and electric height adjust motor is mounted. The Shaft is also attached to the electric motor. When activated, the electric motor will rotate the Shaft, which will lift a recliner bracket attached to the seat. The Link serves as an anchor to hold the electric motor in place while it activates the seat height adjust position. You state that the Link is specifically designed for and used solely with the automobile seat models for which it is designed.

4. The fourth item, *"DAMPER"*, is a bushing made of hard rubber used in the Full Seat Device to protect moving metal parts within the Full Seat Device. It is placed over a power transmission arm of the electric motor used for seat position adjustment. It functions to protect the (metal) transmission arm of the motor from making direct contact with the (metal) shaft of the Full Seat Device, thus preventing damage. You state that the Damper is specifically designed for and used solely with the automobile seat models for which it is designed.

The applicable subheading for the "FOOT" will be 8302.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hatpegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or zinc * * * Other. The rate of duty will be 2% *ad valorem*.

The applicable subheading for the "PLATE" will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

The applicable subheading for the "LINK" will be 8302.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hatpegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or zinc * * * Other. The rate of duty will be 2% *ad valorem*.

The applicable subheading for the "DAMPER" will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H88186
March 4, 2002
CLA-2-87:RR:NC:MM:101 H88186
CATEGORY: Classification
TARIFF NO.: 8501.31.2000, 8708.29.5060

MR. MITCHELL NERIAH
MITCHELL NERIAH CUSTOMS CONSULTING SERVICES
415 S. Prospect Ave., Suite 110
Redondo Beach, California 90277

RE: The tariff classification of *Various Components ("LOWER RAIL COMP, UPPER RAIL COMP, MOTOR WITH GEAR BOX ASSY, GEAR BOX ASSY, AND RECLINER WITH MOTOR") of Seat Adjusting Mechanisms and Seats Used in Motor Vehicles* from Japan

DEAR MR. NERIAH:

In your letter dated January 31, 2002 you requested a tariff classification ruling on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech).

You submitted and photographs of various components of seat adjusting mechanisms and seats used in motor vehicles. You state that the complete seat adjusting mechanism is referred to by IB Tech as a "Full Seat Device." The Full Seat Device is the entire base metal assembly upon which the seat is mounted, and allows for the seat occupant to adjust the seat position forward or reverse, adjust the seat back recline position, and in some cases, raising or lowering seat height in relation to the auto floor. The seat back and the seat bottom are attached to the Full Seat Device, and the Full Seat Device is fastened to the floor by a bracket. In your narrative you state the following:

1. The first two items, LOWER RAIL COMP and UPPER RAIL COMP, are base metal rails with a center groove. The are both components of a Full Seat Device and are the two rails which slide across each other to allow the auto seat to move forward or reverse. The Upper Rail Comp is fastened to the seat bottom directly, and to the Recliner Assy. The Lower Rail Comp is assembled just below the Upper Rail Comp. When used together, the Lower Rail Comp and the Upper Rail Comp create the track for the seat to move forward and reverse. The Lower Rail Comp is secured to the automobile floor by a separate bracket (called a "Foot"). You state that the Upper Rail Comp and Lower Rail Comp are specifically designed for and used solely with automobile seats.
2. The third item, MOTOR WITH GEAR BOX ASSY, is assembled within the track of the Upper Rail Comp. It is an assembly that consists of an electric 70 watt DC motor, a motor coupler, and a threaded adjusting rod with a corresponding grooved centerpiece that fits around the rod along its grooves. The centerpiece has two flanges that are used to fasten the centerpiece to the Lower Rail Comp. When the motor rotates the rod, the torque on the threaded rod forces the rod to move forward or reverse in relation to the stationary centerpiece attached to the Lower Rail Comp. Thus, when the motor is activated and the rod rotates, the centerpiece remains stationary, forcing the rod to move forward and reverse through the stationary centerpiece. Since the rod is ultimately attached to the Upper Rail Comp, the motor's power is transmitted to move the Upper Rail Comp, and thus slides the entire seat forward or reverse along the rails.
3. The fourth item, GEAR BOX ASSY, is the MOTOR WITH GEAR BOX ASSY without the motor. It is used in the Full Seat Device which also uses the Motor With Gear Box Assy. It consists of a coupler, and a threaded adjusting rod with a corresponding grooved centerpiece that fits around the rod along its grooves. The centerpiece has two flanges that are used to fasten the centerpiece to the Lower Rail Comp. The Gear Box Assy functions exactly the same as the Motor

With Gear Box except that it does not have an electric motor incorporated in its assembly. The Gear Box Assy gets its power from the same motor incorporated in the Motor With Gear Box Assy by means of flexible power transmission shaft. This shaft, called a Cable by IB Tech, allows the Full Seat Device to use a single motor to power both the left and right rails to adjust the seat position.

4. The fifth item, RECLINER WITH MOTOR, is an assembly consisting of a base metal hinge with upper and lower attaching bracket arms, a 70 watt DC electric motor, and a geared adjusting mechanism to adjust the incline position of a seat's back. The upper bracket arm attaches to the seat back (upper half of the auto seat). The lower bracket arm attaches to both the seat bottom (lower half of the auto seat), and also to the Upper Rail Comp. When the motor is activated, its power is transmitted through the geared position adjust mechanism and rotates the upper bracket arm to adjust the seat's back incline position. You state that the Recliner With Motor is specifically designed for and used solely with automobile seats.

The applicable subheading for the MOTOR WITH GEAR BOX ASSY will be 8501.30.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Electric motors and generators (excluding generating sets): Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Exceeding 37.5 W but not exceeding 74.6W. The rate of duty will be 2.8% *ad valorem*.

The applicable subheading for the LOWER RAIL COMP, UPPER RAIL COMP, GEAR BOX ASSY, and RECLINER WITH MOTOR will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966036
CLA-2 RR:CR:GC 966036 AML
CATEGORY: Classification
TARIFF Nos.: 8302.42.30; 9401.90.10

MR. JOHN P. SMIRNOW
KATTEN, MUCHIN, ZAVIS AND ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

RE: Modification of NY H88184; Revocation of NY H88186; component parts of automobile seat adjuster assemblies

DEAR MR. SMIRNOW:

This is in reply to your letters of November 5, 2002, and December 20, 2002, on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech"), in which you requested reconsideration of New York Ruling Letters ("NY") H88184 and NY H88186, both of which

were issued to a customs broker on behalf of IB Tech on March 4, 2002. Those rulings concern the classification of various component parts of an automotive seat adjuster assembly under the Harmonized Tariff Schedule of the United States ("HTSUS"). In rendering this decision, we also considered your arguments made during a conference call held on January 30, 2003 and in a supplemental submission dated February 26, 2003.

FACTS:

We described the articles (those specified in your reconsideration request) in NY H88184 as follows:

> The * * * *"FOOT"*, is a stamped metal bracket, used to secure and attach the Full Seat Device to the automobile floor. It has pre-drilled holes for bolts. The Foot is secured to the bottom of the Full Seat Device on one end (to the bottom of the lower slide rail), and to the automobile floor on the other. You state that the Foot is specifically designed for and used solely with automobile seats.
>
> * * * * * * *
>
> The * * * *"DAMPER"*, is a bushing made of hard rubber used in the Full Seat Device to protect moving metal parts within the Full Seat Device. It is placed over a power transmission arm of the electric motor used for seat position adjustment. It functions to protect the (metal) transmission arm of the motor from making direct contact with the (metal) shaft of the Full Seat Device, thus preventing damage. You state that the Damper is specifically designed for and used solely with the automobile seat models for which it is designed.

We concluded in NY H88184 that the foot was classified under subheading 8302.30.30, HTSUS, which provides for base metal mountings, fittings and similar articles, and that the damper was classified under subheading 8708.29.50, HTSUS, which provides for parts and accessories of bodies of the motor vehicles of headings 8701 to 8705.

We described the articles in NY H88186 (those specified in your reconsideration request) as follows:

> The * * * LOWER RAIL COMP and UPPER RAIL COMP, are base metal rails with a center groove. They are both components of a Full Seat Device and are the two rails which slide across each other to allow the auto seat to move forward or reverse. The Upper Rail Comp is fastened to the seat bottom directly, and to the Recliner Assembly. The Lower Rail Comp is assembled just below the Upper Rail Comp. When used together, the Lower Rail Comp and the Upper Rail Comp create the track for the seat to move forward and reverse. The Lower Rail Comp is secured to the automobile floor by a separate bracket (called a "Foot"). You state that the Upper Rail Comp and Lower Rail Comp are specifically designed for and used solely with automobile seats.
>
> The * * * MOTOR WITH GEAR BOX ASSEMBLY, is assembled within the track of the Upper Rail Comp. It is an assembly that consists of an electric 70 watt DC motor, a motor coupler, and a threaded adjusting rod with a corresponding grooved centerpiece that fits around the rod along its grooves. The centerpiece has two flanges that are used to fasten the centerpiece to the Lower Rail Comp. When the motor rotates the rod, the torque on the threaded rod forces the rod to move forward or reverse in relation to the stationary centerpiece attached to the Lower Rail Comp. Thus, when the motor is activated and the rod rotates, the centerpiece remains stationary, forcing the rod to move forward and reverse through the stationary centerpiece. Since the rod is ultimately attached to the Upper Rail Comp, the motor's power is transmitted to move the Upper Rail Comp, and thus slides the entire seat forward or reverse along the rails.
>
> The * * * GEAR BOX ASSEMBLY, is the motor with gear box assembly without the motor. It is used in the Full Seat Device which also uses the Motor with Gear Box Assembly. It consists of a coupler, and a threaded adjusting rod with a corresponding grooved centerpiece that fits around the rod along its grooves. The cen-

terpiece has two flanges that are used to fasten the centerpiece to the Lower Rail Comp. The Gear Box Assembly functions exactly the same as the Motor with Gear Box except that it does not have an electric motor incorporated in its assembly. The Gear Box Assembly gets its power from the same motor incorporated in the Motor with Gear Box Assembly by means of flexible power transmission shaft. This shaft, called a Cable by IB Tech, allows the Full Seat Device to use a single motor to power both the left and right rails to adjust the seat position.

The * * * RECLINER WITH MOTOR, is an assembly consisting of a base metal hinge with upper and lower attaching bracket arms, a 70 watt DC electric motor, and a geared adjusting mechanism to adjust the incline position of a seat's back. The upper bracket arm attaches to the seat back (upper half of the auto seat). The lower bracket arm attaches to both the seat bottom (lower half of the auto seat), and also to the Upper Rail Comp. When the motor is activated, its power is transmitted through the geared position adjust mechanism and rotates the upper bracket arm to adjust the seat's back incline position. You state that the Recliner With Motor is specifically designed for and used solely with automobile seats.

We concluded in NY H88186 that the lower rail comp, upper rail comp, gear box assembly and recliner with motor were classified under subheading 8708.29.50, HTSUS, which provides for parts and accessories of bodies of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. We concluded that the motor with gear box assembly was classified under subheading 8501.30.20, HTSUS, which provides for electric motors and generators (excluding generating sets): other DC motors; DC generators: of an output not exceeding 750 W: motors: exceeding 37.5 W but not exceeding 74.6W.

We clarified during the telephone conference that all of the subject articles are imported separately from any other article. That is, you stated specifically in response to our questions that GRI 2 was neither relied upon nor implicated in this matter because all of the subject articles are imported in individual lots by container and shipment.

ISSUE:

Whether, in their condition as imported, any of the articles are classifiable as articles of hard rubber under heading 4017, HTSUS; base metal parts of general use under heading 8302, HTSUS; as electric motors and generators under heading 8501, HTSUS; as parts or accessories for motor vehicles under heading 8708, HTSUS; or as other parts of seats of a kind used for motor vehicles under heading 9401, HTSUS?

LAW AND ANALYSIS:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS provisions under consideration are as follows:

4017	Hard rubber (for example, ebonite) in all forms, including waste and scrap; articles of hard rubber.
* * * * * * *	
8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat- pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:

8302.30.30	Of iron or steel, of aluminum or of zinc:
8302.30.60	Other.
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc.
* * * * * * *	
8501	Electric motors and generators (excluding generating sets):
	Other DC motors; DC generators:
8501.31	Of an output not exceeding 750 W:
	Motors:
8501.31.20	Exceeding 37.5 W but not exceeding 74.6 W.
* * * * * * *	
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other.
* * * * * * *	
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). As noted in the "facts" section above, although you contend that the articles are designed solely to comprise, when assembled, an automotive seat adjuster, we must consider the articles individually in their respective conditions as imported.

The exclusionary note in Note 2(b), Section XVII, HTSUS, set forth below, provides that if the articles are classifiable as parts of general use of base metal, classification as a part or accessory in heading 8708 is precluded. A similar exclusion may apply in regard to the damper that is composed of hard rubber. "Parts of general use" are defined, for purposes of the entire HTSUS, in Note 2, Section XV, HTSUS, as including, among other things, base metal or plastic articles of heading 8302, HTSUS. Heading 8302 includes, among other things, base metal mountings, fittings and similar articles suitable for coachwork or the like.

Note 2 to Section XVII, which includes Chapter 87, provides, in pertinent part, that:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *

(b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39)[.]

Similarly, Note 1(d) to Chapter 94, HTSUS, provides, in pertinent part, that:

1. This chapter does not cover:

* * * * * * *

(d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)[.]

The general ENs to Section XV provide, in pertinent part, that:

C) PARTS OF ARTICLES

In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.

However, parts of general use (as defined in Note 2 to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

The ENs to Section XV, which includes Chapter 83, provide, in pertinent part, that:

1. This section does not cover:

* * * * * * *

(g) Assembled railway or tramway track (heading 8608) *or other articles of section XVII* (vehicles, ships and boats, aircraft)[emphasis added].

* * * * * * *

2. Throughout the tariff schedule, the expression "parts of general use" means:

* * * * * * *

(c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306.

The ENs to heading 8302, HTSUS, provide, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on * * * coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * * * * * *

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (*e.g.*, motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII** [bold emphasis in original]. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

Note 87.08, Chapter 87, provides, in part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05 **provided** the parts and accessories fulfill **both** the following conditions [emphasis in original]:

(i) They must be identifiable as being suitable for use solely

or principally with the above-mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

* * * * * * *

(B) Parts of bodies and associated accessories, for example * * * floor boards[.]

In view of these very clear statutory provisions, if a good is a base metal mounting and fitting described by heading 8302, it **must** be classified in heading 8302, regardless of whether it is suitable for use with a motor vehicle.

The common characteristic of these articles (parts of general use as contemplated by Note 2 to Section XV) and those classifiable under heading 8302, HTSUS, is that they are articles of base metal (or plastic) which provide the function of attaching, fixing (in place), fitting, connecting, protecting, separating, binding, or stabilizing two separate articles together, or one to (or from) the other. We find that the foot is *ejusdem generis* with the articles set forth above (and as described in Note 2 to Section XV). The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that "[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. Heading 8302 provides for "mountings, fittings *and similar articles*[.]" Thus we find the foot, which you describe as "a stamped metal bracket, used to secure and attach the full seat device to the automobile floor (with pre-drilled holes for bolts)" is properly classified under heading 8302, HTSUS.

You state that the damper is a hard rubber bushing that "protect[s] the (metal) transmission arm of the motor from making direct contact with the (metal) shaft of the Full Seat Device, thus preventing damage." Articles composed of hard rubber are *prima facie* classifiable under heading 4017, HTSUS, which provides for hard rubber in all forms * * * articles of hard rubber. However, the ENs to heading 4017 at page 776 provide that heading 4017 excludes "(b) parts and accessories of hard rubber for vehicles * * * which fall to be classified within any heading in Chapters 86 to 88," as well as "(f) furniture * * * and other articles of Chapter 94." Thus, given that heading 4017, HTSUS, excludes, *inter alia*, parts and accessories classifiable under headings 8708 and 9401, we conclude that the articles are not classifiable under heading 4017, HTSUS.

We next consider whether the articles (the damper, lower rail comp, upper rail comp, gear box assembly, motor with gear box assembly and recliner with motor) are classifiable under heading 8501, HTSUS (only for those articles containing motors), heading 8708, HTSUS or under heading 9401, HTSUS, as set forth above. We note that heading 8501, HTSUS, provides for electrical motors; heading 8708, HTSUS, includes parts and accessories of certain motor vehicles and heading 9401 includes parts of certain seats but does not include accessories. Finally, we note that Additional U.S. Rule of Interpretation 1(c), provides as follows:

1. In the absence of special language or context which otherwise requires—

* * * * * * *

(c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts and accessories" shall not prevail over a specific provision for such part or accessory;

The lower rail comp, upper rail comp, gear box assembly, motor with gear box assembly and recliner with motor are constructed of base metal and the unrefuted argument presented is that the articles can only be assembled to create an automotive seat adjuster assembly. You also establish that the articles are not otherwise marketable. The descriptions and images provided of the lower rail comp and upper rail comp lead us to believe that the articles are manufactured to a level of specification that takes them beyond "parts of general use" as described in Section XV (similarly the gear box assembly, motor with gear box assembly and the recliner with motor do not fall to be described or classified as parts of general use). We also note that the ENs to heading 8302, HTSUS, provide that "the heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or *swivel devices for revolving chairs* [emphasis added]." It follows then that if swivel devices for revolving chairs comprise an essential part of the structure of a revolving chair, likewise the metal components that comprise an adjuster assembly for an automotive seat comprise essential parts of the automobile seats.

We believe that the subject goods are more aptly described as parts of seats than parts of motor vehicles. The facts indicate that:

> [A]ll parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer. Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile. The subject goods become part of the seat, which subsequently is installed in the motor vehicle.

The subject articles are the components that, when combined, will be secured to the floor of an automobile and both hold it in place and allow it to be adjusted to accommodate drivers of different sizes. They are parts of seats of a kind used in motor vehicles (that are articles classifiable under heading 9401, HTSUS). "Where a particular part of an article is provided for specifically, a part of that particular part is more specifically provided for as part of the part than as part of the whole." Sturm, Ruth; *Customs Law & Administration*, 3rd Edition, section 54.9, p. 57 (citing *C.F. Liebert v. United States*, 60 Cust. Ct. 677, C.D. 3499, 287 F. Supp. 1008 (1968); *Foster Wheeler Corp. v. United States*, 61 Cust. Ct. 166, C.D. 3556, 290 F. Supp. 375 (1968); and *Korody-Colyer Corp. v. United States*, 66 Cust. Ct. 337, C.D. 4212 (1971)).

We are satisfied that the subject goods are "parts" of the seats. See, for example, *Bauerhin Technologies v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), *aff'g* 914 F. Supp. 554 (CIT 1995). In *Bauerhin*, the United States Court of Appeals for the Federal Circuit held that canopies for infant car seats which were solely dedicated for use with child safety seats, and were neither designed nor sold to be used independently, were properly classified as parts of car seats. Like the canopies in *Bauerhin*, the upper and lower rail comps at issue are solely dedicated for use with the automobile seats, and are neither designed nor sold to be used independently.

Accordingly, we find that the upper and lower rail comps are provided for under heading 9401, HTSUS. They are classified in subheading 9401.90.10, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles.

Given the description of the damper and following examination of the image provided thereof, we note that the damper—a bushing comprised of hard rubber and designed to protect the rail comp—is most aptly described as a part of the seat as well and is therefore classifiable under heading 9401, HTSUS.

A similar analysis, *i.e.*, that the articles are best described as parts of seats rather than as parts of automobiles, leads us to a similar conclusion with regard to the gear box assembly, which, based upon the description and images provided, is classifiable under heading 9401, HTSUS.

In H88186, we classified the motor with gear box assembly under heading 8501, HTSUS, which provides for electric motors. We are not persuaded by the arguments presented, nor do we find any basis to revisit the conclusion. Therefore, the motor with gear box assembly will remain so classified.

The recliner with motor, which you describe as "an assembly consisting of a base metal hinge with upper and lower attaching bracket arms, a 70 watt DC electric motor, and a geared adjusting mechanism to adjust the incline position of a seat's back," require somewhat of a different analysis. You state that the article consists of an "upper bracket arm [that] attaches to the seat back (upper half of the auto seat)" and a "lower bracket arm [that] attaches to both the seat bottom (lower half of the auto seat)." The electric motor powers the mechanism. If the article consisted of only the recliner brackets, we would classify the article under heading 9401, HTSUS, pursuant to the analysis above. However, given that the article contains an electric motor, the article is *prima facie* classifiable under two headings: heading 9401 and heading 8501 which provides for electric motors. Thus, the article is not classifiable at GRI 1. GRI 2 (b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3." GRI 3(b) provides that "mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Under GRI 3(b), classification of the composite good is determined on the basis of the component that gives it its essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

While the electric motor enhances the use of the recliner, we find that the brackets that both comprise the hinge of the recliner and the connection to the automotive seat as a whole impart the essential character to the article. Although we are not presented with information concerning the value of the electric motor as compared to that of the base metal components, we find that consideration of the comparative nature of the components, bulk, weight and role of the constituent material in relation to the use of the recliner with motor leads to the conclusion that the geared metal hinge, which comprises the recliner mechanism and holds/maintains the position of the seat, imparts the essential character of the recliner with motor. The automotive seat would be useless without the base metal brackets that join and support the upper and lower parts of the article. Given the relative roles of the components, the electric motor is an accessory to the recliner. (See *Rollerblade, Inc. v. United States*, 116 F. Supp. 2d 1247, .1252 (2000 Ct. Int'l Trade). The *Rollerblade* court cites several definitions, but the one most germane to the instant case is the following: "something extra added to help in a secondary way: * * * b) a piece of optional equipment for convenience, comfort, etc." *Webster's New World Dictionary of the American Language 4* (2d Concise Ed. 1978)(cited in *Rollerblade*, at 1252). Furthermore, the court emphasized that an accessory "must serve a purpose subordinate to, but also in direct relationship to the thing they accessorize." *Id.* (See HQ 965580, dated June 24, 2002.) Accordingly, pursuant to the above referenced section notes and GRI 3(b), the recliner with motor is classified under heading 9401, HTSUS.

HOLDING:

The base metal foot is classifiable under subheading 8302.42.30, HTSUS, which provides for base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof: Other, suitable for furniture: Of iron or steel, of aluminum or of zinc. The damper, upper and lower rail comps, the gear box, and recliner with motor are classifiable under subheading 9401.90.10, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used

for motor vehicles. The motor with gear box assembly remains classified under heading 8501, HTSUS.

EFFECT ON OTHER RULINGS:
NY H88184 is modified and H88186 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF SEAT ADJUSTER COMPONENTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: Notice of proposed modification of ruling letters and revocation of treatment relating to tariff classification of seat adjuster components.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify three ruling letters pertaining to the tariff classification of certain seat adjuster components under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before September 5, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew Langreich, General Classification Branch, (202) 572–8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify three ruling letters pertaining to the classification of certain seat adjuster components. Although in this notice Customs is specifically referring to three rulings, NY H88185, NY H88183, and NY H88554, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. In this respect, two additional notices are being published in this issue of the Customs Bulletin which identify other proposed modification and/or revocation rulings on this merchandise. One notice proposes to modify NY 88184 and revoke NY 88186 pursuant to the analysis in proposed HQ 966036. The second notice proposes to modify HQ 962046 and to revoke HQ 961652 and NY 815567 pursuant to the analysis in proposed HQ 966201, HQ 966450 and HQ 966449, respectively. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the three identified. Other than as identified above, no further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice or the other two notices should advise Customs during this notice period. All of the identified rulings will be the subject of one final notice.

Any comments received on one notice will be considered as comments on all three notices.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY H88185 dated March 4, 2002 (set forth as Attachment A to this Document), NY H88183 dated February 27, 2002 (Attachment B), and NY H88554 dated February 28, 2002 (Attachment C), Customs classified certain seat adjuster components in subheading 8708.29.50, HTSUS, as: "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other."

It is now Customs position that most of the seat adjuster components at issue are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: parts: Of seats of a kind used for motor vehicles." It is also Customs position that one of the seat adjuster components in one of the rulings (the pipe comp in NY H88183) is classified in subheading 8302.42.30, HTSUS, as "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof: Other, suitable for furniture: Of iron or steel, of aluminum or of zinc." Proposed HQ 965970 modifying NY H88185, proposed HQ 966001 modifying NY H88183, and proposed HQ 966113 modifying NY H88554 are set forth as Attachments D, E, and F, respectively, to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY H88185, NY H88183, NY H88554, and modify or revoke the rulings identified in the other two notices in this Customs Bulletin on this merchandise, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965970, HQ 966001, and HQ 966113, respectively, and the other notices. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions.

Before taking this action, we will give consideration to any written comments timely received.

DATED: July 16, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H88185
March 4, 2002
CLA-2-87:RR:NC:MM:101 H88185
CATEGORY: Classification
TARIFF NO.: 7320.90.5060, 8708.29.5060, 9401.90.1080

MR. MITCHELL NERIAH
MITCHELL NERIAH CUSTOMS CONSULTING SERVICES
415 S. Prospect Ave., Suite 110
Redondo Beach, California 90277

RE: The tariff classification of Various Components ("SLIDE INNER RAIL", "SLIDE OUTER RAIL", "WIRE COMP", "MANUAL RECLINER", and "SPIRAL SPRING") from Japan

DEAR MR. NERIAH:

In your letter dated January 30, 2002 you requested a tariff classification ruling on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech).

You submitted and photographs of various components of seat adjusting mechanisms and seats used in motor vehicles. You state that the complete seat adjusting mechanism is referred to by IB Tech as a "Full Seat Device." The Full Seat Device is the entire base metal assembly upon which the seat is mounted, and allows for the seat occupant to adjust the seat position forward or reverse, adjust the seat back recline position, and in some cases, raising or lowering seat height in relation to the auto floor. The seat back and the seat bottom are attached to the Full Seat Device, and the Full Seat Device is fastened to the floor by a bracket. In your narrative you state the following:

> The first item, "SLIDE INNER RAIL", is a component of the Full Seat Device. The Slide Inner Rail is used on a Full Seat Device which adjusts the seat position manually rather than by electric motor. The Slide Inner Rail is a base metal assembly, with an inner slotted track for engaging a locking mechanism, a spring loaded handle lock/release mechanism, and a top slide bracket which mounts to the auto seat bottom. The occupant pulls the handle, releasing a locking mechanism along the slotted track, and allows the seat to slide forward or reverse. The slide Inner Rail is attached to the auto floor by a separate bracket (called a "Foot"), and to the seat bottom. You state that the Slide Inner Rail is specifically designed for and used solely with automobile seats.
>
> The second item, "SLIDE OUTER RAIL", is a component of the Full Seat Device. The Slide Outer Rail is used on a Full Seat Device which adjusts the seat position manually rather than by electric motor. The Slide Inner Rail is a base metal as-

sembly, with an inner slotted track for engaging a locking mechanism, a spring loaded handle lock/release mechanism, and a top slide bracket which mounts to auto seat bottom. The Slide Outer Rail is always used with the Slide Inner Rail, one on each side, to assemble the Full Seat Device. The Slide Outer Rail is attached to the auto floor by a separate bracket (called a "Foot"), and to the seat bottom. Unlike the Slide Inner Rail, the slide Outer Rail does not have a handle release for the locking mechanism. The locking mechanism is released by connecting the release handle on the Slide Inner Rail to the locking mechanism on the Slide Outer Rail by a wire assembly. The wire assembly is called a "WIRE COMP", the third subject of this ruling request. You state that the Slide Outer Rail is specifically designed for and used solely with automobile seats.

The third item, "WIRE COMP", is a steel wire with a loop on each end. The wire loop ends are secured with a metal grommet. The wire is used on the manually operated Full Seat Device and the slide rails described above. The Wire Comp attaches between the locking mechanism in the Slide Outer Rail to release the handle in the Slide Inner Rail. As the handle is turned, the wire pulls and releases the locking mechanism from the slots in the Slide Outer Rail. You state that the Wire Comp is specifically designed for and used solely with automobile seats.

The fourth and fifth items, "MANUAL RECLINER" and "SPIRAL SPRING" are parts of manually operated seat recline position adjusters. The Manual recliner is a base metal assembly with a center turning mechanism to which an outside handle is attached on the protruding shaft. On the inside is a cam which rotates with the shaft as the outer handle is pulled. Around the cam is a flange which supports the Spiral spring. The Spiral Spring is placed on the Manual Recliner, so that the inner end of the Spiral Spring rests between the flange and the cam which is turned by the outer handle. When the handle is pulled, the cam is turned, and pulls the spring so that the centripetal spring pressure is abated. This allows the back seat to swivel along a shaft in the seat, thus raising or lowering the incline of the seat back. When the handle is released, the spring flexes back outward, causing enough pressure to lock the seat back in position. The Manual recliner is not part of a Full Seat Device. The Manual Recliner is assembled as part of an automobile seat, and is bolted to and welded to the seat back frame.

The applicable subheading for SPIRAL SPRING the will be 7320.90.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Springs and leaves for springs, of iron or steel: Other: Other * * * Other. The rate of duty will be 2.9% *ad valorem*.

The applicable subheading for the SLIDE INNER RAIL, SLIDE OUTER RAIL, and WIRE COMP will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

The applicable subheading for MANUAL RECLINER the will be 9401.90.1080, Harmonized Tariff Schedule of the United States (HTS), which provides for Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles * * * Other. The rate of duty will be Free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any

questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H88183
February 27, 2002
CLA-2-87:RR:NC:MM:101 H88183
CATEGORY: Classification
TARIFF NO.: 7320.90.5060, 8302.30.3060, 8708.29.5060

MR. MITCHELL NERIAH
MITCHELL NERIAH CUSTOMS CONSULTING SERVICES
415 S. Prospect Ave., Suite 110
Redondo Beach, California 90277

RE: The tariff classification of Various Components ("Pipe Comp", "Cable", "Spring", "Bracket Comp") of Seat Adjusting Mechanisms and Seats Used in Motor Vehicles from Japan

DEAR MR. NERIAH:

In your letter dated January 31, 2002 you requested a tariff classification ruling on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech).

You submitted photographs of various components of seat adjusting mechanisms and seats used in motor vehicles. You state that the complete seat adjusting mechanism is referred to by IB Tech as a "Full Seat Device." The Full Seat Device is the entire base metal assembly upon which the seat is mounted, and allows for the seat occupant to adjust the seat position forward or reverse, adjust the seat back recline position, and in some cases, raising or lowering seat height in relation to the auto floor. The seat back and the seat bottom are attached to the Full Seat Device, and the Full Seat Device is fastened to the floor by a bracket.

The first item, "PIPE COMP" is used on a Full Seat Device. It is a base metal tube with flanges on each end to attach to a recliner bracket on the left and right sides of the Full Seat Device. There is an additional one-inch flange welded on the tube near one end. Near the other end of the tube are two small drilled holes. The PIPE COMP functions to support the overall structure of the Full Seat Device by connecting the left and right slide rails and recliner brackets. It also serves as an anchor for mounting the third item, the "SPRING". You state that the PIPE COMP is specifically designed for and used solely with automobile seats, and cannot be used in any other application.

The second item, "CABLE", is a power transmission shaft used with an electrically operated Full Seat Device. The Full Seat Device uses an electric motor and slide rails with a threaded adjusting mechanism to adjust the seat position forward or reverse. The power of the electric motor is used to turn the adjusting mechanism, and moves the seat forward or reverse along the rails. Although both the left and right slide rails have the threaded adjusting mechanism, only one electric motor is used to power them both. The Cable is a flexible power transmission shaft, with a rectangular cross sectional shape, which is connected between the electric motor mounted on the left side rail and the threaded adjusting mechanism on the right side rail. The Cable transmits the motor's power from the motor to the adjusting mechanism on the far rail. Thus, when the motor is activated, the adjusting mechanisms in both rails are activated simultaneously. You

state that the Cable is specifically designed for and used solely with automobile seats, and cannot be used in any other application.

The third item, "SPRING", is a steel spring in the form of a strait (sic) rod with one end hooked 180 degrees back towards the middle, and the other end bent at a 90 degree angle. The Spring is installed on the Pipe Comp. The 180 degree hooked end is inserted into the welded flange on the Pipe Comp. The other end of the Spring is inserted through two pre-drilled holes in the Pipe Comp. The protruding end of the spring is then bent back to secure it in place in the Pipe Comp. The spring functions in the Full Seat Device as a spring to apply upward force on the seat bottom to assist the height adjust electric motor when activated. As the Pipe Comp rotates, it builds a load on the Spring to push upward, and thus assist the power of the electric motor. You state that the Spring is specifically designed for and used solely with automobile seats, and cannot be used in any other application.

The fourth item, "BRACKET COMP", is a base metal bracket which is used to secure an auto seat to a Full Seat Device. The bracket has four pre-drilled holes, two of which allow the bracket to be fastened by bolts to the Full Seat Device. The other two holes allow the bracket to be fastened to the seat. You state that the Bracket Comp is specifically designed for and used solely with automobile seats, and cannot be used in any other application.

The applicable subheading for the "PIPE COMP" and the "CABLE" will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

The applicable subheading for the "BRACKET COMP" will be 8302.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or zinc * * * Other. The rate of duty will be 2% *ad valorem*.

The applicable subheading for the "SPRING" will be 7320.90.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Springs and leaves for springs, of iron or steel: Other: Other * * * Other. The rate of duty will be 2.9% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H88554
February 28, 2002
CLA-2-87:RR:NC:MM:101 H88554
CATEGORY: Classification
TARIFF NO.: 8302.30.3060, 8708.29.5060

MR. MITCHELL NERIAH
MITCHELL NERIAH CUSTOMS CONSULTING SERVICES
415 S. Prospect Ave., Suite 110
Redondo Beach, California 90277

RE: The tariff classification of Various Components ("COVER", "END CAP", "SLIDE", "BUSH", "HOOK") of Seat Adjusting Mechanisms and Seats Used in Motor Vehicles from Japan

DEAR MR. NERIAH:

In your letter dated February 6, 2002 you requested a tariff classification ruling on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech).

You submitted samples and photographs of various components of seat adjusting mechanisms and seats used in motor vehicles. You state that the complete seat adjusting mechanism is referred to by IB Tech as a "Full Seat Device." The Full Seat Device is the entire base metal assembly upon which the seat is mounted, and allows for the seat occupant to adjust the seat position forward or reverse, adjust the seat back recline position, and in some cases, raising or lowering seat height in relation to the auto floor. The seat back and the seat bottom are attached to the Full Seat Device, and the Full Seat Device is fastened to the floor by a bracket.

The first item, "COVER", is a molded plastic piece used on a Full Seat Device. It is designed so that it fits perfectly over an exposed Recliner Assembly of the Full Seat Device. The Recliner Assembly is located at the meeting of the seat bottom and seat back. It is an adjusting hinge that allows the seat occupant to adjust the incline of the seat back. The Cover functions to provide a cosmetically smooth and visually appealing finish to the Recliner of the Full Seat Device.

The second item, "END CAP", is a molded plastic piece used on a Full Seat Device. It is designed so that it fits perfectly in place over the exposed front end of the slide rail of the Full Seat Device. The End Cap snaps into place on the slide rail, and functions to provide a cosmetically smooth and visually appealing finish to the front of the Full Seat Device.

The third item, "SLIDE", is a molded plastic piece used on a Full Seat Device. The slide is approximately 14 cm long and approximately 1.8 cm wide. It is an "L-shaped" piece, designed to fit perfectly and permanently (snaps into place) along the inside track of a lower slide rail on a Full Seat Device. Each lower rail uses four of these slides. The Slide functions as a bushing to help protect the Full Seat Device rails from possible damage caused by the metal on metal contact from the sliding of the rails. They are a necessary component of the seat adjusting mechanism, and you state, are specifically designed for and used solely with the Full Seat Device, and cannot be used in any other application.

The fourth item, "BUSH", is a circular collar-like bushing made of base metal. It is used on a Full Seat Device as a bushing to protect a metal pipe assembly from damage when in use. The Pipe is the component of the Full Seat Device which, when rotated by an electric motor, assists in seat height adjustment. The Bush is placed inside the Pipe and welded into place. You state that the bushing is specifically designed for and used solely with the Full Seat Device, and cannot be used in any other application.

The fifth item, "HOOK", is a small base metal "S-shaped" bracket. The Hook is attached to a rail on the Full Seat Device, and is used as a bracket to attach and anchor a seat belt to the Full Seat Device.

The applicable subheading for the "HOOK" will be 8302.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hatpegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or zinc * * * Other. The rate of duty will be 2% *ad valorem*. You state that you believe that the COVER and END CAP are classified under HTS 3926.90.9880, which provides for "other articles of plastic." We disagree with your proposed classification.

The applicable subheading for the "COVER", "END CAP", "SLIDE", and "BUSH" will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other. The rate of duty will be 2.5% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965970
CLA-2 RR:CR:GC 965970 GOB
CATEGORY: Classification
TARIFF NO.: 9401.90.10

JOHN P. SMIRNOW
KATTEN MUCHIN ZAVIS ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

RE: Modification of NY H88185; Seat Adjuster Components

DEAR MR. SMIRNOW:

This letter is in reply to your letter of October 11, 2002, on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech"), in which you request that we reconsider the classification of certain items in NY H88185 dated March 4, 2002. NY H88185 was issued to a party other than you and your firm on behalf of IB Tech. We have also considered the points raised by you and your colleagues in the telephone conference of January 30, 2003 and your additional submission of February 26, 2003.

FACTS:

The goods at issue were described as follows in NY H88185:

The first item, "SLIDE INNER RAIL," is a component of the Full Seat Device. The Slide Inner Rail is used on a Full Seat Device which adjusts the seat position

manually rather than by electric motor. The Slide Inner Rail is a base metal assembly, with an inner slotted track for engaging a locking mechanism, a spring loaded handle lock/release mechanism, and a top slide bracket which amounts to the auto seat bottom. The occupant pulls the handle, releasing a locking mechanism along the slotted track, and allows the seat to slide forward or reverse. The Slide Inner Rail is attached to the auto floor by a separate bracket (called a "Foot"), and to the seat bottom. You state that the Slide Inner Rail is specifically designed for and used solely with automobile seats.

The second item, "SLIDE OUTER RAIL," is a component of the Full Seat Device. The Slide Outer Rail is used on a Full Seat Device which adjusts the seat position manually rather than by electric motor. The Slide Outer Rail is a base metal assembly, with an inner slotted track for engaging a locking mechanism, a spring loaded handle lock/release mechanism, and a top slide bracket which mounts to the auto seat bottom. The Slide Outer Rail is always used with the Slide Inner Rail, one on each side, to assemble the Full Seat Device. The Slide Outer Rail is attached to the auto floor by a separate bracket (called a "Foot"), and to the seat bottom. Unlike the Slide Inner Rail, the Slide Outer Rail does not have a handle release for the locking mechanism. The locking mechanism is released by connecting the release handle on the Inner Slide Rail to the locking mechanism on the Slide Outer Rail by a wire assembly. The wire assembly is called a "WIRE COMP" * * * You state that the Slide Outer Rail is specifically designed for and used solely with automobile seats.

The third item, "WIRE COMP," is a steel wire with a loop on each end. The wire loop ends are secured with a metal grommet. The wire is used on the manually operated Full Seat Device and the slide rails described above. The Wire Comp attaches between the locking mechanism in the Slide Outer Rail to release the handle in the Slide Inner Rail. As the handle is turned, the wire pulls and releases the locking mechanism from the slots in the Slide Outer Rail. You state that the Wire Comp is specifically designed for and used solely with automobile seats.

IB Tech states as follows with respect to the relevant manufacturing process:

The slide inner rail, slide outer rail, and wire comp are designed together with all other parts of a specific finished seat such that the seat cannot be placed on the floor of an automobile without all of its components. The interrelatedness of the slide inner rail, slide outer rail, wire comp and all other parts comprising the finished seat is therefore recognized at the onset of motor vehicle seat production.

Subsequent to seat design, IB Tech incorporates the slide inner rail, slide outer rail, and wire comp, as well as other seat parts, into a full seat device. At this stage of production, the full seat device is most accurately viewed as a collection of certain parts of a motor vehicle seat.

Upon completion of the full seat device, IB Tech then transfers the full seat device to a motor vehicle seat manufacturer. The seat manufacturer subsequently combines the full seat device together with all other seat parts, e.g., the seat back and seat bottom, into a finished motor vehicle seat. It is important to recognize that all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer.

Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile, i.e., the seat is placed on the floor of the vehicle, bolted down, and electrical connections are established where necessary. Only a finished motor vehicle seat is capable of being properly installed within the automobile.

In NY H88185 Customs classified the slide inner rail, the slide outer rail, and the wire comp in subheading 8708.29.50, HTSUS.

ISSUE:

What is the classification under the HTSUS of the slide inner rail, slide outer rail, and wire comp?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or of zinc
8302.42	Other; suitable for furniture
8302.42.30	Of iron or steel, of aluminum or of zinc
* * * * * * *	
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
* * * * * * *	
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

Note 2(c) to Section XV, HTSUS, which includes Chapter 83, provides in pertinent part as follows:

> 2. Throughout the tariff schedule, the expression "*parts of general use*" means:
>
> * * * * * * *
>
> (c) Articles of heading 8301, 8302, 8308, or 8310 * * *
>
> [Emphasis in original.]

Note 2(b) to Section XVII, HTSUS, which includes Chapter 87, provides:

> 2. The expressions "*parts*" and "*parts and accessories*" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *

(b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39);
[Emphasis in original.]

Note 1(d) to Chapter 94, HTSUS, provides:

1. This chapter does not cover:

* * * * * * *

(d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39), or safes of heading 8303;

Pursuant to Note 2(c) to Section XV, Note 2(b) to Section XVII, and Note 1(d) to Chapter 94, if the goods at issue are described in heading 8302, HTSUS, that provision takes precedence over heading 8708, HTSUS, and heading 9401, HTSUS. Therefore, the initial inquiry is whether the goods at issue are described in heading 8302, HTSUS, i.e., are they base metal mountings, fittings and similar articles suitable for furniture, doors, etc?

In HQ 959052 dated May 17, 1996, we examined "mounting" in the context of heading 8302, HTSUS. We stated:

> The term "mounting" ("mount") is broadly defined as a frame or support, such as, "an undercarriage or part on which a device (as a motor or artillery piece) rests in service," or "an attachment for an accessory." *Webster's Ninth New Collegiate Dictionary*, pp. 775–776 (1990). Thus, a mounting is generally a component that serves to join two other parts together.

Webster's Third New International Dictionary (unabridged; 1961) defines "fitting" as follows:

> 1 a : something used in fitting up : accessory, adjunct, attachment * * * b. a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus * * *

EN 83.02 provides in pertinent part as follows:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc* * * * This heading does not, however, extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs.
>
> This heading covers:
>
> * * * * * * *
>
> **(C) Mountings, fittings and similar articles suitable for motor vehicles** (e.g., motor cars, lorries or motor vehicles), **not being** parts or accessories of Section XVII. For example, made up ornamental beading strips; foot rests; grip bars; rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.
>
> * * * * * * *
>
> **(E) Mountings, fittings and similar articles suitable for furniture**
>
> This group includes:
>
> (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book cases, etc.; fittings for cupboards; bedsteads, etc.; keyhole plates
>
> (2) Corner braces, reinforcing plates, angles, etc.
>
> (3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).
>
> (4) Hasps and staples for chests, etc.

(5) Handles and knobs, including those for locks or latches.

[All emphasis in original.]

After consideration, we find that the slide inner rail, slide outer rail, and wire comp are not described in heading 8302, HTSUS, based upon our belief that they are not within the common and commercial meaning of mountings (e.g., they do not serve as frames or supports), fittings, or similar articles, as discussed above. In making this finding, we also conclude that the subject goods are not of the same class or kind as the items enumerated in EN 83.02, above.

The next inquiry is whether the goods are described in Heading 8708, HTSUS or heading 9401, HTSUS. We note that heading 8708, HTSUS, includes parts and accessories of certain motor vehicles while heading 9401 includes parts of certain seats but does not include accessories.

We believe that under GRI 3(a) the subject goods are more narrowly and specifically provided for as parts of seats than as parts of motor vehicles. The facts indicate that "* * * all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer. Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile * * *" The subject goods become part of the seat, which subsequently is installed in the motor vehicle. We are satisfied that the subject goods are "parts" of the seats, as they meet the various tests enunciated by the courts. See, e.g., *Bauerhin Technologies v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), *aff'g* 914 F. Supp. 554 (CIT 1995).

Accordingly, we find that the slide inner rail, the slide outer rail, and the wire comp are provided for in heading 9401, HTSUS. They are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

Our findings are consistent with the following rulings: NY H88691 dated March 8, 2002, where Customs classified a seat adjustment assembly in subheading 9401.90.10, HTSUS; NY F81117 dated January 7, 2000, where Customs classified a front seat back latch assembly in subheading 9401.90.10, HTSUS; and NY 870789 dated February 7, 1992, where Customs classified a metal bar which was part of an automatic seat adjuster in subheading 9401.90.10, HTSUS.

HOLDING:

The slide inner rail, slide outer rail, and wire comp are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

EFFECT ON OTHER RULINGS:

NY H88185 is modified as to the slide inner rail, slide outer rail and wire comp.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966001
CLA-2 RR:CR:GC 966001 GOB
CATEGORY: Classification
TARIFF NO.: 9401.90.10; 8302.42.30

JOHN P. SMIRNOW
KATTEN MUCHIN ZAVIS ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

RE: Modification of NY H88183; Components of Car Seat Device

DEAR MR. SMIRNOW:

This letter is in reply to your letter of October 23, 2002, on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech"), in which you request that we reconsider the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain items in NY H88183 dated February 27, 2002. NY H88183 was issued to a party other than you and your firm on behalf of IB Tech. We have also considered the points raised by you and your colleagues in the telephone conference of January 30, 2003, and your additional written submission of February 26, 2003.

FACTS:

In NY H88183, Customs classified four items, two of which are at issue here. The two items at issue were described in that ruling as follows:

> The first item, "PIPE COMP," is used on a Full Seat Device. It is a base metal tube with flanges on each end to attach to a recliner bracket on the left and right sides of the Full Seat Device. There is an additional one-inch flange welded on the tube near one end. Near the other end of the tube are two small drilled holes. The PIPE COMP functions to support the overall structure of the Full Seat Device by connecting the left and right slide rails and recliner brackets. It also serves as an anchor for mounting the third item, the "SPRING." You state that the PIPE COMP is specifically designed for and used solely with automobile seats, and cannot be used in any other application.
>
> The second item, "CABLE," is a power transmission shaft used with an electrically operated Full Seat Device. The Full Seat Device uses an electric motor and slide rails with a threaded adjusting mechanism to adjust the seat position forward or reverse. The power of the electric motor is used to turn the adjusting mechanism, and moves the seat forward or reverse along the rails. Although both the left and right slide rails have the threaded adjusting mechanism, only one electric motor is used to power them both. The Cable is a flexible power transmission shaft, with a rectangular cross sectional shape, which is connected between the electric motor mounted on the left side rail and the threaded adjusting mechanism on the right side rail. The Cable transmits the motor's power from the motor to the adjusting mechanism on the far rail. Thus, when the motor is activated, the adjusting mechanisms in both rails are activated simultaneously. You state that the Cable is specifically designed for and used solely with automobile seats, and cannot be used in any other application.

IB Tech states as follows with respect to the relevant manufacturing process:

> The pipe comp [and] cable * * * are designed together with all other parts of a specific finished seat such that the seat cannot be placed on the floor of an automobile without all of its components. The interrelatedness of the pipe comp, cable * * * and all other parts comprising the finished seat is therefore recognized at the onset of motor vehicle seat production.
>
> Subsequent to seat design, IB Tech incorporates the pipe comp, cable * * * as well as other seat parts, into a full seat device. At this stage of production, the full seat

device is most accurately viewed as a collection of certain parts of a motor vehicle seat.

Upon completion of the full seat device, IB Tech then transfers the full seat device to a motor vehicle seat manufacturer. The seat manufacturer subsequently combines the full seat device together with all other seat parts, e.g., the seat back and seat bottom, into a finished motor vehicle seat. It is important to recognize that all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer.

Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile, i.e., the seat is placed on the floor of the vehicle, bolted down, and electrical connections are established where necessary. Only a finished motor vehicle seat is capable of being properly installed within the automobile.

In NY H88183, Customs classified the pipe comp and cable in subheading 8708.29.50, HTSUS.

ISSUE:

What is the classification under the HTSUS of the above-described goods?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or of zinc
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc
* * * * * * *	
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
* * * * * * *	

9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

Note 2(c) to Section XV, HTSUS, which includes Chapter 83, provides in pertinent part as follows:

> 2. Throughout the tariff schedule, the expression *"parts of general use"* means:
>
> * * * * * * *
>
> (c) Articles of heading 8301, 8302, 8308, or 8310 * * *
> [Emphasis in original.]

Note 2(b) to Section XVII, HTSUS, which includes Chapter 87, provides:

> 2. The expressions *"parts"* and *"parts and accessories"* do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *
>
> (b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39);
> [Emphasis in original.]

Note 1(d) to Chapter 94, HTSUS, provides:

> 1. This chapter does not cover:
>
> * * * * * * *
>
> (d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39), or safes of heading 8303;

Pursuant to Note 2(c) to Section XV, Note 2(b) to Section XVII, and Note 1(d) to Chapter 94, if the goods at issue are described in heading 8302, HTSUS, that provision takes precedence over heading 8708, HTSUS, and heading 9401, HTSUS. Therefore, the initial inquiry is whether the goods at issue are described in heading 8302, HTSUS, i.e., are they base metal mountings, fittings and similar articles suitable for furniture, doors, etc?

In HQ 959052 dated May 17, 1996, we examined "mounting" in the context of heading 8302, HTSUS. We stated:

> The term "mounting" ("mount") is broadly defined as a frame or support, such as, "an undercarriage or part on which a device (as a motor or artillery piece) rests in service," or "an attachment for an accessory." *Webster's Ninth New Collegiate Dictionary*, pp. 775–776 (1990). Thus, a mounting is generally a component that serves to join two other parts together.

Webster's Third New International Dictionary (unabridged; 1961) defines "fitting" is described as follows:

> 1 a : something used in fitting up : accessory, adjunct, attachment * * * b. a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus * * *

EN 83.02 provides in pertinent part as follows:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. * * * This heading does not, however, extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs.
>
> This heading covers:
>
> * * * * * * *

(C) Mountings, fittings and similar articles suitable for motor vehicles (e.g., motor cars, lorries or motor vehicles), **not being** parts or accessories of Section XVII. For example, made up ornamental beading strips; foot rests; grip bars; rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

* * * * * * *

(E) Mountings, fittings and similar articles suitable for furniture

This group includes:

(1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book cases, etc.; fittings for cupboards; bedsteads, etc.; keyhole plates

(2) Corner braces, reinforcing plates, angles, etc.

(3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).

(4) Hasps and staples for chests, etc.

(5) Handles and knobs, including those for locks or latches.

[All emphasis in original.]

After consideration, we find that the pipe comp is described in heading 8302, HTSUS, because it has the indicia of a mounting, fitting or similar article. The description of the pipe comp in the FACTS section of this ruling includes the following: "The PIPE COMP functions to *support* the overall structure of the Full Seat Device by connecting the left and right slide rails and recliner brackets. It also serves as an anchor for *mounting* the third item, the 'SPRING.' " [Emphasis supplied.] This description is consistent with the definition of "mounting" in HQ 959052, excerpted above. We find that the pipe comp is classified in subheading 8302.42.30, HTSUS, as: "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof: Other; suitable for furniture: Of iron or steel, of aluminum or of zinc."

We find that the cable is not described in heading 8302, HTSUS, based upon our belief that it is not within the common and commercial meaning of a mounting (e.g., it does not serve as a frame or support), fitting or similar article, as discussed above. Further, the cable is not of the same class or kind as the items enumerated in EN 83.02, above.

The next inquiry is whether the cable is described in Heading 8708, HTSUS or heading 9401, HTSUS. We note that heading 8708, HTSUS, includes parts and accessories of certain motor vehicles while heading 9401 includes parts of certain seats but does not include accessories.

We believe that under GRI 3(a) the cable is more narrowly and specifically provided for as a part of a seat than as a part of a motor vehicle. The facts indicate that " * * * all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer. Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile * * * " The cable becomes part of the seat, which subsequently is installed in the motor vehicle. We are satisfied that the cable is a "part" of the seat, as it meets the various tests enunciated by the courts. See, e.g., *Bauerhin Technologies v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), *aff'g* 914 F. Supp. 554 (CIT 1995).

Accordingly, we find that the cable is provided for in heading 9401, HTSUS. It is classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

Our finding with respect to the cable is consistent with the following rulings: NY H88691 dated March 8, 2002, where Customs classified a seat adjustment assembly in subheading 9401.90.10, HTSUS; NY F81117 dated January 7, 2000, where Customs classified a front seat back latch assembly in subheading 9401.90.10, HTSUS; and NY 870789 dated February 7, 1992, where Customs classified a metal bar which was part of an automatic seat adjuster in subheading 9401.90.10, HTSUS.

HOLDING:

The pipe comp is classified in subheading 8302.42.30, HTSUS, as: "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof: Other, suitable for furniture: Of iron or steel, of aluminum or of zinc."

The cable is classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

EFFECT ON OTHER RULINGS:

NY H88183 is modified as to the pipe comp and cable.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966113
CLA-2 RR:CR:GC 966113 GOB
CATEGORY: Classification
TARIFF NO.: 9401.90.10

JOHN P. SMIRNOW
KATTEN MUCHIN ZAVIS ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

RE: Modification of NY H88554; Components of Car Seat Device

DEAR MR. SMIRNOW:

This letter is in reply to your letter of October 23, 2002, on behalf of Imasen Bucyrus Technology, Inc. ("IB Tech"), in which you request that we reconsider the classification of certain items in NY H88554 dated February 28, 2002. NY H88554 was issued to a party other than you and your firm on behalf of IB Tech. We have also considered the points raised by you and your colleagues in the telephone conference of January 30, 2003, and your additional written submission of February 26, 2003.

FACTS:

In H88554, the four items pertinent to your request were described as follows:

> The first item, "COVER," is a molded plastic piece used on a Full Seat Device. It is designed so that it fits perfectly over an exposed Recliner Assembly of the Full Seat Device. The Recliner Assembly is located at the meeting of the seat bottom and seat back. It is an adjusting hinge that allows the seat occupant to adjust the incline of the seat back. The Cover functions to provide a cosmetically smooth and visually appealing finish to the Recliner of the Full Seat Device.
>
> The second item, the END CAP," is a molded plastic piece used on a Full Seat Device. It is designed so that it fits perfectly in place over the exposed front end of the slide rail of the Full Seat Device. The End Cap snaps into place on the slide

rail, and functions to provide a cosmetically smooth and visually appealing finish to the front of the Full Seat Device.

The third item, "SLIDE," is a molded plastic piece used on a Full Seat Device. The slide is approximately 14 cm long and approximately 1.8 cm wide. It is an "L-shaped" piece, designed to fit perfectly and permanently (snaps into place) along the inside track of a lower slide rail on a Full Seat Device. Each lower rail uses four of these slides. The Slide functions as a bushing to help protect the Full Seat Device rails from possible damage caused by the metal on metal contact from the sliding of the rails. They are a necessary component of the seat adjusting mechanism, and you state, are specifically designed for and used solely with the Full Seat Device, and cannot be used in any other application.

The fourth item, "BUSH," is a circular collar-like bushing made of base metal. It is used on a Full Seat Device as a bushing to protect a metal pipe assembly from damage when in use. The Pipe is the component of the Full Seat Device which, when rotated by an electric motor, assists in seat height adjustment. The Bush is placed inside the Pipe and welded into place. You state that the bushing is specifically designed for and used solely with the Full Seat Device, and cannot be used in any other application.

IB Tech states as follows with respect to the relevant manufacturing process:

The * * * slide, bush, cover, and end cap are designed together with all other parts of a specific finished seat such that the seat cannot be placed on the floor of an automobile without all of its components. The interrelatedness of the * * * slide, bush, cover, and end cap and all other parts comprising the finished seat is therefore recognized at the onset of motor vehicle seat production.

Subsequent to seat design, IB Tech incorporates the * * * slide, bush, cover, and end cap, as well as other seat parts, into a full seat device. At this stage of production, the full seat device is most accurately viewed as a collection of certain parts of a motor vehicle seat.

Upon completion of the full seat device, IB Tech then transfers the full seat device to a motor vehicle seat manufacturer. The seat manufacturer subsequently combines the full seat device together with all other seat parts, e.g., the seat back and seat bottom, into a finished motor vehicle seat. It is important to recognize that all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer.

Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile, i.e., the seat is placed on the floor of the vehicle, bolted down, and electrical connections are established where necessary. Only a finished motor vehicle seat is capable of being properly installed within the automobile.

In NY H88554, Customs classified the cover, end cap, slide, and bush in subheading 8708.29.50, HTSUS.

ISSUE:

What is the classification under the HTSUS of the above-described goods?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the inter-

national level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows * * * and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or of zinc
8302.42	Other; suitable for furniture
8302.42.30	Of iron or steel, of aluminum or of zinc
* * * * * * *	
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
* * * * * * *	
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

Note 2(c) to Section XV, HTSUS, which includes Chapter 83, provides in pertinent part as follows:

2. Throughout the tariff schedule, the expression "*parts of general use*" means:

* * * * * * *

(c) Articles of heading 8301, 8302, 8308, or 8310 * * *
[Emphasis in original.]

Note 2(b) to Section XVII, HTSUS, which includes Chapter 87, provides:

2. The expressions "*parts*" and "*parts and accessories*" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

* * * * * * *

(b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39);
[Emphasis in original.]

Note 1(d) to Chapter 94, HTSUS, provides:

1. This chapter does not cover:

* * * * * * *

(d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39), or safes of heading 8303;

Pursuant to Note 2(c) to Section XV, Note 2(b) to Section XVII, and Note 1(d) to Chapter 94, if the goods at issue are described in heading 8302, HTSUS, that provision takes precedence over heading 8708, HTSUS, and heading 9401, HTSUS. Therefore, the initial inquiry is whether the goods at issue are described in heading 8302,

HTSUS, i.e., are they base metal mountings, fittings and similar articles suitable for furniture, doors, etc?

In HQ 959052 dated May 17, 1996, we examined "mounting" in the context of heading 8302, HTSUS. We stated:

> The term "mounting" ("mount") is broadly defined as a frame or support, such as, "an undercarriage or part on which a device (as a motor or artillery piece) rests in service," or "an attachment for an accessory." *Webster's Ninth New Collegiate Dictionary*, pp. 775–776 (1990). Thus, a mounting is generally a component that serves to join two other parts together.

Webster's Third New International Dictionary (unabridged; 1961) defines "fitting" is described as follows:

> 1 a : something used in fitting up : accessory, adjunct, attachment * * * b. a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus * * *

EN 83.02 provides in pertinent part as follows:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. * * * This heading does not, however, extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs.
>
> This heading covers:
>
> * * * * * * *
>
> **(C) Mountings, fittings and similar articles suitable for motor vehicles** (e.g., motor cars, lorries or motor vehicles), **not being** parts or accessories of Section XVII. For example, made up ornamental beading strips; foot rests; grip bars; rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.
>
> * * * * * * *
>
> **(E) Mountings, fittings and similar articles suitable for furniture**
>
> This group includes:
>
> (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book cases, etc.; fittings for cupboards; bedsteads, etc.; keyhole plates
>
> (2) Corner braces, reinforcing plates, angles, etc.
>
> (3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).
>
> (4) Hasps and staples for chests, etc.
>
> (5) Handles and knobs, including those for locks or latches.
> [All emphasis in original.]

After consideration, we find that the cover, end cap, slide, and bush are not described in heading 8302, HTSUS, based upon our belief that they are not within the common and commercial meaning of mountings (e.g., they do not serve as frames or supports), fittings, or similar articles, as discussed above. In making this finding, we also conclude that the subject goods are not of the same class or kind as the items enumerated in EN 83.02, above.

The next inquiry is whether the subject goods are described in Heading 8708, HTSUS or heading 9401, HTSUS. We note that heading 8708, HTSUS, includes parts and accessories of certain motor vehicles while heading 9401 includes parts of certain seats but does not include accessories.

We believe that under GRI 3(a) the subject goods are more narrowly and specifically provided for as parts of seats than as parts of motor vehicles. The facts indicate that " * * * all parts of the motor vehicle seat are incorporated into the finished motor vehicle seat by the seat manufacturer prior to being sent to the automobile manufacturer. No separate seat parts are sent directly to the automobile manufacturer. Once all seat parts have been assembled into a finished motor vehicle seat, the finished seat is then transferred from the seat manufacturer's facility to an automobile assembly facility where the seat is installed in an automobile * * * " The subject goods become part of the seat, which subsequently is installed in the motor vehicle. We are satisfied that the subject goods are "parts" of the seats, as they meet the various tests enunciated by the courts. See, e.g., *Bauerhin Technologies v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), *aff'g* 914 F. Supp. 554 (CIT 1995).

Accordingly, we find that the cover, end cap, slide, and bush are provided for in heading 9401, HTSUS. They are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

Our findings are consistent with the following rulings: NY H88691 dated March 8, 2002, where Customs classified a seat adjustment assembly in subheading 9401.90.10, HTSUS; NY F81117 dated January 7, 2000, where Customs classified a front seat back latch assembly in subheading 9401.90.10, HTSUS; and NY 870789 dated February 7, 1992, where Customs classified a metal bar which was part of an automatic seat adjuster in subheading 9401.90.10, HTSUS.

HOLDING:

The cover, end cap, slide, and bush are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles."

EFFECT ON OTHER RULINGS:

NY H88554 is modified as to the cover, end cap, slide and bush.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF VIBRATORY PLATES AND RAMMERS

AGENCY: U.S. Customs and Border Protection, Dept. of Homeland Security

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of any treatment relating to the classification of vibratory plates and rammers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (Customs) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of vi-

bratory plates and rammers. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 6, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, at (202) 572–8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling letter relating to the tariff classification of certain vibratory plates and rammers. Although in this notice Customs is specifically referring to

the modification of New York Ruling Letter (NY) 842039, dated June 15, 1989 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 842039, Customs classified, among other things, vibratory plates and rammers for use in compacting earth and gravel in preparation for the installation of concrete. Customs classified the vibratory plates and rammers in subheading 8467.89.50, HTSUS, which provides for "Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: Other tools: Other: Other."

Based on our analysis of the scope of the terms of headings 8467 and 8429, HTSUS, the Legal Notes, and the Explanatory Notes, the vibratory plates and rammers subject to this notice are classified in subheading 8429.40.00, HTSUS, which provides for "Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers: Tamping machines and road rollers."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 842039 and to revoke any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966580 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determi-

nation set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 16, 2003

JOHN ELKINS,
for Myles B. Harmon,
Director,
Commercial Rulings Division.

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 842039
JUN 15, 1989
CLA–2–84:S:N:N1:115 842039
CATEGORY: Classification
TARIFF NO.: 8467.89.5090

MR. TED ADAIR
BARTELL INDUSTRIES INC.
31 Sun Pac Blvd.
Brompton, Ontario L65 5P6

RE: The tariff classification of a power trowel and a vibratory plate compactor from Canada, and rammers from Japan.

DEAR MR. ADAIR:

In your undated follow-up to our Form II–RC–118, dated .April 5, 1989, you furnished the brochures required to permit this office to classify your products.

The subject items include a power trowel and a vibratory plate from Canada, and rammers from Japan. Please note the following:

a) The power trowel is powered by a gasoline engine and is used for finishing concrete. The trowel is operator controlled by use of a handle equipped with a throttle, pitch control for the blades and a safety switch. The flat rectangular steel blades rotate on the concrete surface causing it to become flat and smooth while hardening. The machine weight varies by model, but none exceed approximately 250 pounds.

b) The vibratory plate compactors are powered by Gasoline engines and are used for compressing earth, clay, or gravel, prior to the installation of concrete. The compactor is controlled and directed in operation by an operator. Vibrations are transmitted through a steel plate onto the work surface. The vibrations also cause the machine to travel. The machine weight varies by model, with the heaviest model weighing 195 pounds.

c) The rammers, models BR–50 and BR–65, are machines that are powered by gasoline engines and are used for compaction in narrow areas. The rammers are hand-controlled and directed during operation. The rammers affect compaction by the stomping action of a steel plate driven by a piston like shaft. The heavier rammer, model BR–65, weighs 150 pounds.

The applicable subheading for all of the items will be 8467.89.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for other tools for working in the hand, pneumatic or with self-contained nonelectric motor, and parts thereof, other. The duty rate will be 2.5% *ad valorem*.

Goods classifiable under subheading 8467.89.5090, HTS, which have originated in the territory of Canada, will be entitled to a 2% *ad valorem* rate of duty under the

United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966580
CLA–2 RR:CR:GC 966580 DSS
CATEGORY: Classification
TARIFF NO.: 8429.40.00

MR. TED ADAIR
BARTELL INDUSTRIES, INC.
31 Sun Pac Blvd.
Brampton, Ontario, Canada L65 5P6

RE: Modification of NY 842039; vibratory plates and rammers

DEAR MR. ADAIR:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York ruling letter (NY) 842039, dated June 15, 1989, which was issued to you by the Director, National Commodity Specialist Division, New York, with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including vibratory plates and rammers. After review of NY 842039, Customs has determined that the classification of vibratory plates and rammers under subheading 8467.89.50, HTSUS, was incorrect.

FACTS:

In NY 842039, Customs classified power trowels, vibratory plates and rammers. The vibratory plates and rammers are self-propelled, gasoline-powered machines designed for compressing earth, clay or gravel prior to the installation of concrete. In NY 842039, Customs classified the subject vibratory plates and rammers under subheading 8467.89.50, HTSUS, which provides for "Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: Other tools: Other: Other."

ISSUE:

What is the proper tariff classification for self-propelled vibratory plates and rammers?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the interna-

tional level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8429	Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers:
8429.40.00	Tamping machines and road rollers
* * * * * * *	
8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers:
	Other machinery, not self-propelled:
8430.61.00	Tamping or compacting machinery
* * * * * * *	
8467	Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof:
	Other tools:
8467.89	Other:
8467.89.50	Other:

Relevant ENs indicate that the machines of heading 8429, HTSUS, include self-propelled tamping machines which are used in road building. EN 84.29 states that:

> The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.
>
> The provisions of Explanatory Note to heading 84.30 relating to self-propelled and multi-function machines apply, *mutandis mutatis*, to the self-propelled machinery of this heading, which includes the following:
>
> * * * (H) **Tamping machines** as used in road making, for packing rail-road ballast, etc. * * *

EN 84.30 states that heading 8430, HTSUS, classifies tamping machines that are not self-propelled. However, the instant vibratory plates and rammers are self-propelled tamping machines and are specifically classified under heading 8429, HTSUS. *See HQ 089015*, dated July 26, 1991.

According to GRI 3(a), the merchandise in question must be classified pursuant to the heading providing the most specific description. *See Better Home Plastics Corp v. United States*, 20 C.I.T. 221, 222; 916 F. Supp. 1265, 1266 (1996). Moreover, EN 3(a)(IV)(a) states in pertinent part that "a description by name is more descriptive than a description by class." Indeed, the Court of Appeals for the Federal Circuit states that under the rule of specificity, "the court w[ill] look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty." *See Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1380 (Fed. Cir. 1999) (*citing Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)). The term "self-propelled tamping machines" would appear to be more descriptive of the machines under consideration than the term "ma-

chines for working in the hand" because the former term is more restrictive and has terms that are more difficult to satisfy.

The ENs to heading 8467 provide, in pertinent part, that:

> The heading covers such tools only if for working in the hand. The expression "tools for working in the hand" means tools designed to be held in the hand during use, and also heavier tools (such as earth rammers) which are portable, that is, which can be lifted and moved by hand by the user, in particular while work is in progress, and which are also designed to be controlled and directed by hand during operation. To obviate the fatigue of taking their full weight during operation they may be used with auxiliary supporting devices (e.g., tripods, jacklegs, overhead lifting tackle)* * * *

The instant machines should be classified under subheading 8429.40.00, HTSUS, as self-propelled tamping machines, according to GRI 3(a). In this case, subheading 8429.40.00, HTSUS, is the provision with the requirements that are more difficult to satisfy and that describes the instant vibratory plates and rammers with the greater degree of accuracy and certainty. Heading 8467, HTSUS, tools for working in the hand, covers a wide range of tools for working in the hand. Heading 8429, HTSUS, on the other hand covers a narrower range of earth digging, excavating or compacting machines that are explicitly cited in the heading text. Most importantly, the machines must be self-propelled. We believe that self-propelled earth compacting rammers are more accurately and specifically described by subheading 8429.40.00, HTSUS.

HOLDING:

In accordance with the above discussion, the correct classification for self-propelled vibratory plates and rammers is subheading 8429.40.00, HTSUS, which provides for "Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers: Tamping machines and road rollers."

NY 842039 is MODIFIED with respect to this merchandise.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN LAMPWORKED GLASS ARTICLES KNOWN AS "ECOSPHERES"

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain lampworked glass spheres known as "ecospheres."

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises inter-

ested parties that Customs intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of certain lampworked glass articles for display known as ecospheres. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 6, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, Mint Annex, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572–8721.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that Cus-

toms intends to revoke a ruling letter relating to the tariff classification of certain lampworked glass articles known as ecospheres. Although in this notice Customs is specifically referring to New York Ruling letter ("NY") NY I84003, dated August 5, 2002, (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I84003, Customs classified the ecospheres in subheading 7013.99.50, HTSUS, which provides for "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * * other glassware: other: other: other; valued over thirty cents but not over three dollars each."

Based on information submitted by the importer, it is now Customs position that the ecospheres are classified in subheading 7018.90.50, HTSUS, which provides for, among other things "other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to revoke NY I84003 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Rulings Letter (HQ) HQ 966442 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking

this action, consideration will be given to any written comments timely received.

DATED: July 18, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I84003
August 5, 2002
CLA-2:70:RR:NC:2:226 I84003
Tarrif No.: 7013.99.5000

MR. STEPHEN BESSLER BYRNES
P.O. Box 22377
Tucson, AZ 85734–2377

RE: The tariff classification of a decorative glass sphere with glass plug

DEAR MR. BESSLER:

In your letter dated July 1, 2002, on behalf of Ecosphere, you requested a tariff classification ruling regarding a decorative glass item consisting of a glass sphere with glass plug.

A sample was submitted with your ruling request.

In a conversation with our office, Ecosphere explained that the product will be used in the home as a decorative terrarium/aquarium. Marine life (including algae and shrimp) will be placed in the sphere along with water. The plug will then be used to close the sphere.

This product will be known as an Ecosphere. It will function in the home as a decorative article displaying a natural environment.

The applicable subheading for the glass sphere with glass plug will be 7013.99.5000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * * other glassware: other: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be thirty percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 646–733–3027.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966442
CLA-2 RR:CR:GC 966442 RSD
CATEGORY: Classification
Tariff No. 7018.90.50

STEPHEN S. SPRAITZAR, ESQ.
LAW OFFICES OF GEORGE R. TUTTLE
Three Embarcadero Center
Suite 1160
San Francisco, California 94111

RE: Reconsideration of NY I84003, Lamp-worked Glass Articles known as Ecospheres, Lamp-Worked Glass, Ornaments

DEAR MR. SPRAITZAR:

This is in response to your letter dated February 27, 2003, on behalf of Ecosphere Associates, Inc., requesting reconsideration of New York Ruling Letter (NY) NY I84003 dated August 5, 2002, concerning the tariff classification of a glass article known as an "ecosphere". Two samples of the ecosphere were submitted. You made a supplemental submission dated April 14, 2003. In addition, you submitted a video on a CD-Rohm to demonstrate how the ecosphere is made. An accompanying e-mail further explained the process.

FACTS:

The imported merchandise is a glass sphere with a small glass plug that is used as a cover. After importation, the importer fills the glass sphere with water, active microorganisms, bright red shrimp, and algae. The importer then seals the sphere with the hole cover. The finished products are thereafter sold to consumers, universities and schools for display.

The video that you submitted shows that the first step in producing the ecospheres is the arrival of borosilicate glass tubes at the glass factory. You indicate that borosilicate tubes have a nominal diameter of nine (9) millimeters. The tubes are segmented and then heated over a liquid propane gas burner until they reach a molten state. The molten glass is pulled to create long tubular sections at the ends. These ends will be used later as hand holds for post-processing. The glass worker attaches a flexible tube to the segmented glass tubes. During this sequence, the glass acquires a spherical shape as a result of the air being blown into it. By this process, the articles are made by hand.

One of the handles on the glass is then removed. Next, the flat base is formed. After that, using a graphite form tool plug, a hole is formed. This plug creates the specific size of the hole. The glass sphere is then mounted onto a finger-type holder so that the last remaining handle segment can be removed and the top rounded. The sphere is then dismounted from the finger holder and is placed onto a graphite holding tool. The glass sphere is then placed into a wire basket with other parts that will then go into the annealing oven, where an even heating and cooling will remove any stresses that may cause the glass to crack. Based on the video, it appears that except for the annealing in an oven, all the processing done to make the glass spheres is performed over an open flame.

ISSUE:

Are the glass ecospheres classified as other glassware in subheading 7013.99.50, HTSUS, or as statuettes and other ornaments of lamp-worked glass, other, other in subheading 7018.90.50, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event

that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. Customs believes the EN's should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware:
7013.99	Other:
7013.99.50	Valued over $0.30 but not over $3 each.
* * * * * * *	
7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.50	Other:
7018.50.90	Other.
* * * * * * *	

There is no question that the articles are classifiable in Chapter 70, HTSUS, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that "all articles of glass are generally defined as 'glassware' " (63 Cust. Ct. at 250; citing *Webster's Third New International Dictionary*, Merriam-Webster (1968); see also *Webster's New World Dictionary, Third College Edition*, Webster's New World, at 573 (1988), defining "glassware" as "articles made of glass"). What must be determined is which subheading within Chapter 70 best describes the articles.

The fundamental issue in this case that must be resolved is whether the ecospheres should be considered articles of lamp-worked glass classified in heading 7018, HTSUS. The national import specialist, in reviewing the sample glass spheres, noted that they are substantially different from the typical product claimed to be a lamp-worked ornament of heading 7018, HTSUS. In a memorandum, he explained that generally, lamp-worked ornaments are very small (e.g., small glass flowers, candies or animals).

In Headquarters Ruling Letter (HQ) 950837, dated May 4, 1992, we analyzed the term "lamp-working" as used in heading 7018, HTSUS, and reviewed several authorities on glass working to better understand the meaning of the term "lamp-worked glass". In HQ 950837, we first pointed out that a dictionary definition of lamp-working states that:

> it is the process of fashioning objects from glass tubing and cane softened to workability over the flame of a small lamp. The definition states that it should be compared with glassblowing, which is defined as an art of shaping a mass of glass by inflating it through a tube after the glass has been heated to a viscid state. *Webster's Third New International Dictionary.*

We next looked at a specific book on lamp-working called *In Flameworking-Glassmaking for the Craftsman*, Chilton Haynes (1968), by Frederic Schuler, and quoted the following language regarding lampworking, on page 7:

> the technique of flameworking, or reheating glass rod or tubing or other pieces of glass, was once called "lampworking." This method was used as early as 1660 to shape microscope lenses; the simple burners were derived from small oil lamps. With this technique, the glass was heated in a relatively small area where pieces were to be sealed, enlarged, or changed in some manner. The cool ends of the glass were held in the hands, which controlled the rotation and position of the fluid central portion. Today, with a simple workbench, a few tools, and burner which uses gas with oxygen or air, this procedure shapes marvelous jewels of glass in a direct manner.

Another resource that we examined was *In Phaidon Guide to Glass*, Prentice Hall (1987), by Felice Mehlman. In that book, lampworking is defined as follows on page 13:

> working at the lamp for making small glass objects such as toys, trinkets and beads, the craftsman would work "at the lamp", where rods of annealed glass could be heated in the concentrated flame of an oil lamp (or later, a Bunsen burner) and shaped by tools.

Based on these authorities we summarized our position on lamp-working as:

> The technique and the types of equipment used should define lampworking. Given the variety of forms a "blow lamp" may now take, if a glassworker softens glass rods and manipulates them over an oil lamp, a Bunsen burner or any other "lamp" producing a hot flame, this method of glass shaping should be considered "working at the lamp".

In considering the ecospheres, we looked at a recent authority on glass working entitled *Advanced Glassworking Techniques*, Glass Mountain Press (2003), by Edward T. Schmid, which defines "lamp-working" as process of heating up glass over a torch. Often incorporating the use of rods and tubing to create works of art. Often (although not limited to) smaller scaled piece of incredible detail and complexity.

With this information as guidance, we reviewed the background material submitted on the ecospheres and carefully watched the video that you submitted. The video shows that the glass used to make the ecospheres is continuously melted and manipulated over an open flame. The glass workers use a blowpipe to create the spherical shape of the ecosphere. Based on the video, it appears that when the blowpipe is being used, the glass is still heated over a flame. In fact, the only step involved in making the glass sphere that is not done over a flame is the annealing process, which is done in an oven. However, the annealing is only a finishing operation that prevents the glass spheres from cracking, and it is done after the ecospheres have already acquired their final shape and dimensions. It is our position that the annealing process done in this case as a finishing operation would not disqualify the ecospheres from being considered lamp-worked glass.

Although the ecospheres may not resemble typical lamp-worked pieces, they are nevertheless produced through the continuous heating and shaping or manipulating of glass tubing over a torch/open flame. Thus, in consideration of the specific information and evidence that you have presented, we are satisfied that they are made as a result of a lamp-working process.

However, in order to be classified in heading 7018, the articles must also be described as statuettes and other ornaments of lamp-worked glass. The EN's for heading 7018 indicate that the heading includes:

> Statuettes and other ornaments (other than imitation jewellery) obtained by working glass in the pasty state with a blow-pipe. These articles are designed for placing on shelves (animals, plants, statuettes, etc.). They are generally made of clear glass (lead crystal, strass etc.) or "enamel" glass.

You contend that the flat bottom on the sphere indicates that the ecospheres are intended to be placed on a flat surface such as a shelf. In addition, these glass sphere are designed to be filled with water, microorganisms, bright red shrimp and algae after importation, so that purchasers can display them for aesthetic purposes. More-

over, the items are made of clear glass. Therefore, we consider the ecospheres to be ornaments within heading 7018, HTSUS.

Accordingly, we find that the ecospheres are classified in heading 7018, HTSUS. More specifically, the pieces are classified in subheading 7018.90.50, HTSUS, which provides for * * * other ornaments of lamp-worked glass * * * Other: Other.

HOLDING:

The subject ecospheres are classified in subheading 7018.90.50, HTSUS, as "* * * * statuettes and other ornaments of lamp-worked glass * * * : Other: Other."

EFFECT ON OTHER RULINGS:

NY I84003 dated August 5, 2002 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STENCILS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to tariff classification of stencils.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking four rulings and modifying five rulings pertaining to the tariff classification of stencils under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on May 21, 2003, in the CUSTOMS BULLETIN. Three comments were received in response to this notice, two of which in opposition to the proposed action. The issues raised in those comments are addressed in the attached rulings. The third comment identified additional rulings for modification.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), notice was published on May 21, 2003 in the CUSTOMS BULLETIN, Volume 37, Number 21, proposing to revoke HQ 951965, dated September 18, 1992; HQ 950926, dated March 31, 1992; PD F85514, dated May 2, 2000; PD F87884, dated June 3, 2000; and to modify NY 811162, dated June 20, 1995; NY E87868, dated October 15, 1999; and NY H88793, dated March 1, 2002, all of which classified stencils and stencil sets in subheading 9503.90.00, HTSUS (or its predecessor provision 9503.90.60), as toys. Three comments were received in response to the notice.

As stated in the proposed notice, these revocations and modifications will cover any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period. One comment identified NY F85077, dated April 25, 2000, and NY G80679, dated September 6, 2000, as rulings also requiring modification.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transac-

tions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling concerning merchandise covered by this notice which was not identified, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 951965, dated September 18, 1992; HQ 950926, dated March 31, 1992; PD F85514, dated May 2, 2000; PD F87884, dated June 3, 2000; NY 811162, dated June 20, 1995; NY E87868, dated October 15, 1999; and NY H88793, dated March 1, 2002, stencils were classified in subheading 9503.90.00, HTSUS (or its predecessor provision 9503.90.60), which provides for other toys. In NY F85077, dated April 25, 2000, and NY G80679, dated September 6, 2000, stencils were classified according to their constituent material. In several of these rulings, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) regarding stencils (EN 90.17) were interpreted as narrowing the scope of heading 9017, HTSUS, so as to limit the type of stencil that qualified as a drawing instrument to only sophisticated or professional stencils (e.g., for drafting).

It is now Customs position that the stencils in the above-listed rulings are classified in subheading 9017.20.80, HTSUS, which provides for other drawing, marking-out or mathematical calculating instruments. Stencil sets are classified according to General Rule of Interpretation 1 as drawing sets, which are provided for *eo nomine* in the heading text of heading 9017, HTSUS, so long as the drawing instrument (stencil) imparts the essential character of the set. See EN (X)(3), GRI 3(b). They are also classified in subheading 9017.20.80, HTSUS. Stencils that qualify as drawing instruments are those intended to create designs by making lines with writing utensils; that is, drawing. Toys, on the other hand, are designed for amusement. While drawing may provide amusement, many articles involving drawing, coloring, painting and the like are generally excluded from classification in the toy provision because they are designed for drawing, not amusement. Thus, such stencils are not classifiable as toys. This decision is consistent with several other rulings regarding the scope of each of the headings.

Customs response to the comments received in opposition to the proposed notice are incorporated into the LAW AND ANALYSIS sections of the attached rulings. The modification of NY F85077 and NY

G80679 are incorporated into HQ 966194, which modifies a ruling to the same importer on substantially similar merchandise.

In a forthcoming notice, Customs will be revoking and/or modifying other rulings identified during the comment period which classify drawing kits that do not have the essential character of a stencil under heading 9503, HTSUS, pursuant to the position reflected in the attached rulings.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 951965, HQ 950926, PD F85514, PD F87884, and modifying NY 811162, NY E87868, NY H88793, NY F85077 and NY G80679, and revoking/modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 966198, HQ 966197, HQ 966193, HQ 966192, HQ 966195, HQ 966194 and HQ 966191 (Attachments A through G, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: July 18, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966198
July 21, 2003
CLA-2: RR:CR:GC 966198 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MS. VIVIEN GONZALEZ
C-AIR INTERNATIONAL, INC.
11222 S. La Cieneca Blvd.
Suite 470
Inglewood, CA 90304

RE: Lisa Frank® "Stencils & Pencils"; HQ 951965 revoked

DEAR MS. GONZALEZ,

On September 18, 1992, this office issued Headquarters Ruling Letter (HQ) 951965 in response to a memorandum requesting reconsideration of HQ 950926, dated March 31, 1992. HQ 950926 classified the Lisa Frank® "Stencil & Pencils" activity set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in subheading 9503.90.60, HTSUS (now 9503.90.00), as a toy. HQ 951965 af-

firmed that decision. We have reconsidered HQ 951965 and HQ 962926 and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were received in response to the notice, two of which were in opposition to the proposed action. Comments will be addressed in the revised LAW AND ANALYSIS section, *infra.*

FACTS:

The merchandise at issue is a set consisting of a 6.5″ x 3.5″ yellow plastic stencil depicting a rough outline of a farm and farm animals, four colored pencils, and three erasers (shaped like a cow, a rabbit, and a heart).

ISSUE:

Whether stencils for drawing designs are classified as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and the article cannot be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other.
* * * * * * *	
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other.

The issue before us is whether the stencils are toys or drawing instruments, though the merchandise consists of a blister pack of three items. We have previously determined that the instant merchandise is classifiable as a set put up for retail sale, as specified in GRI 3(b), HTSUS. We are still of that opinion. *See* EN (X)(3), GRI 3(b); *see also Informed Compliance Publication*, "The Classification of Sets", December 1999. Therefore, the focus of this ruling is on the classification of the stencils in the set, which, for purposes of GRI 3(b), impart the essential character of the set because the

stencils provide the figures to be drawn, the motif, the consumer's attraction to the set, and comprise the bulk of the set. *See* EN VIII, GRI 3(b); *see also Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. U.S.*, 966 F.Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (1998).

Articles of Chapter 95, HTSUS, are not classifiable in Chapter 90, HTSUS. See Note 1(k), Chapter 90. In HQ 951965 we stated that the instant set was designed to amuse children and thus classified as a toy in heading 9503, HTSUS, and excluded from Chapter 90, HTSUS.

The term "toy" is not defined in the HTSUS. However, the General EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a "principal use" provision, insofar as it pertains to "toys." *See Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967).

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, *of goods of that class or kind to which the imported goods belong*, and the controlling use is the principal use." *Emphasis added.* In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

For articles that are both amusing and functional, we look to *Ideal Toy Corp. v United States*, 78 Cust. Ct. 28 (1977), in which the court stated that "when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement." In HQ 085267, dated May 9, 1990, Customs found that, with respect to a drawing kit including a jacket, "[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose." That is, not all merchandise that provides amusement is properly classified in a toy provision.

Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

(a) Paints put up for children's use (heading 32.13).
(b) Modelling pastes put up for children's amusement (heading 34.07).
(c) Children's picture, drawing or colouring books of heading 49.03.
(d) Transfers (heading 49.08).

* * * * * * *

(h) Crayons and pastels for children's use, of heading 96.09.
(ij) Slates and blackboards, of heading 96.10..

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1

under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the US tariff schedule is based provided for the above-listed articles *eo nomine* in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, Customs has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets.

Customs has never considered writing, coloring, drawing or painting to have significant "manipulative play value," for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. See HQ 085267, dated May 9, 1990 (ruling "Graffiti Gear" was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying "Doodle Clings" coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the "Video Painter" and "Design Studio Accessory Kit," which included several stencils under heading 9017 for the same reason); and HQ 962327, dated June 23, 2000, (determining that an art activity set was not put up in a form indicating use as toys and thus was not classifiable as a toy set at GRI 1, nor a GRI 3(b) set for retail sale); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying "Trace N' Color" in heading 9017).

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not "essentially playthings." Exceptions may exist where the activity achieved from a set is role-play, such as playing fashion designer.

However, in the stencil arena Customs has issued conflicting rulings classifying stencils of similar construction to the instant stencils in heading 9503, HTSUS, in heading 9017, HTSUS, as drawing instruments, and by constituent material. While HQ 951965 reconsidered and affirmed HQ 950926, the history of these two rulings also includes a proposal to revoke both rulings in 1997 and a subsequent withdrawal notice in 1998. Part 177.12 of the Customs Regulations (19 C.F.R. § 177.12) states, in relevant part, that a ruling found to be in error or not in accord with the current views of Customs may be revoked or modified through 19 U.S.C. § 1625(c). Part 177.13 (19 C.F.R. § 177.13) provides for Customs to rectify inconsistent decision of Customs officials. Taken in *pari materia*, these sections dictate that inconsistent treatment is impermissible under the regulations. As such, Customs instant action is warranted, though comments received in opposition to the proposed revocations and modifications claim it is not.

The commentors point out that Customs withdrawal of the notice proposing to revoke HQ 951965 and HQ 950926 in April of 1998 (CUSTOMS BULLETIN, Vol. 32, No. 15, p. 50) included an analysis of the set under the *Carborundum* criteria in which we stated the set was actually of a class or kind classified as a toy set of subheading 9503.70.00, HTSUS. We note that this determination was never reflected in HQ 951965 and HQ 950926 (as classification remained in subheading 9503.90.60, HTSUS, according to GRI 3(b)), and serves only as *dicta*; the notice is not binding. Moreover, the notice neglected the fact that Customs has long ruled that articles and sets designed for drawing are not designed for amusement, and thus are not classified as toys. The fact that a child will trace (not invent, as the notice stated) barnyard animals and may create farm scenes does not rise to the level of role-play, especially since the only articles in the set are stencils, pencils and erasers. Further, though a toy set of subheading 9503.70.00, HTSUS, need not consist of any article classifiable individually as a toy, it is integral to the concept of GRI 1 toy sets that the articles typically are used together to provide amusement. The components of the toy set must

possess a clear nexus which contemplates a use together to amuse. HQ 959232, dated June 2, 1998; HQ 962327, *supra*. The components in this set have the necessary nexus, but it contemplates tracing animals with colored pencils, not amusement of children or adults. Thus, the instant set is not classified in subheading 9503.70.00, HTSUS.

In light of the foregoing, the *Carborundum* factors should have been applied as follows:

1. The general physical characteristics of the articles in the "Stencils and Pencils" set are animal-shaped stencils, colored pencils and erasers. Regardless of whether the colors or shapes are amusing, the physical characteristics of the "Stencils and Pencils" set consist of articles used for drawing.
2. The expectation of the ultimate purchaser is to trace and color in the shapes in the stencil with the pencils.
3. The channels of trade are anything from a toy store to a stationery store to an all-purpose store, such as Wal-Mart. Many Lisa Frank® products, while marketed towards children because of their bright colors and designs, are not sold as toys, but as school supplies.
4. The environment of sale (accompanying accessories, manner of advertisement and display) also includes a range of store types. However, the packaging advertises "Other Lisa Frank Back-to-School Products * * * " which suggests that while the target user is a child, the product is not intended to be a toy.
5. The use is not in the same manner as merchandise classified as toys because the use is drawing.
6. As the set is comprised of stencils, pencils and erasers, articles clearly used to draw, the economic practicality of using the set for drawing is clear.
7. The recognition in the trade that stencils and a set of stencils, pencils and erasers are used for drawing or tracing is unquestionable.

The foregoing application of the *Carborundum* criteria clearly indicates that stencils are not goods of a kind designed for amusement. As such, the principal use of the instant set is not amusement.

"Stencil" is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.), *cert. denied*, 488 U.S. 943, (1988).

The American Heritage Dictionary (2d College ed.; 1982) defines a "stencil," in pertinent part, as "[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath." This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is an instrument for creating a design.

EN 90.17 (A)(6), states that heading 9017, HTSUS, covers "Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material." In order to determine which stencils are "specialised as drawing instruments" we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes "instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.)." The General ENs also state that "[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types," and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to

drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and "T" types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

The term "drawing" means "the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines," while the term "draw" means "to produce a likeness or representation of by making lines on a surface." *Webster's Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the "drawing, marking-out or mathematical calculating instruments" of the heading are items used to create designs. *See Hewlett-Packard Co. v. United States*, 189 F. 3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that "drawing" is limited to professional or specialized drawing, just as "calculating" is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children's activity sets and children's stencil sets, have been classified in heading 9017, HTSUS. *See, e.g., HQ 953922, supra*; HQ 962327, dated June 23, 2000

We note that in HQ 958805, *supra*, which classified the "Trace N' Color" set as a drawing set of heading 9017, HTSUS, and HQ 958063, dated February 13, 1996, which similarly classified the "Playskool Painter" set, we stated that an article's degree of sophistication was not a relevant criterion for heading 9017, HTSUS, with the exception of stencils. This statement is considered *dicta* because stencils that are classified by constituent material, i.e., those that are not "specialised as drawing instruments," are not "unsophisticated" stencils. Rather, "sophisticated" stencils not intended to be used with writing utensils, such as duplicator stencils and mechanical-type stencils for mimeographing, silk screening, photography and the like, are classified according to constituent material. The instant stencils are designed to be used with a writing utensil; they are "specialised as drawing instruments."

The commentors in opposition of the proposed revocations and modifications further contend that the stencils at issue are toys because they are "toy representations" or "junior editions" of stencils of heading 9017, HTSUS. Based on the application of the *Carborundum* factors, *supra* at 5–6, and the interpretation of heading 9017, HTSUS, it is evident that these stencils cannot be deemed toy representations or junior editions regardless of how crude or sophisticated they are.

Therefore, a stencil of heading 9017, HTSUS, must simply be a drawing instrument. The instant stencils are stencils intended to create designs. Given that the other components of the set are pencils and erasers, it is clear the designs are to be created by tracing the stencils. While drawing farm animals may provide amusement, the stencil was designed as an implement to create tracings of farm animals. Thus, design motif is not a factor for the tariff classification of stencils. According, stencils are classified in subheading 9017.20.80, HTSUS, as other drawing instruments. Because the stencil imparts the essential character of "Stencils and Pencils," it controls the classification of the set.

We also note that the commentors attempted to rely on a Stipulated Judgment on Agreed Statement of Facts which concluded a litigation pending before the CIT to support their position. Rule 58.1 of the CIT's Rules of Procedure states that an action may be stipulated for judgment at any time without brief, complaint or formal amendment of any pleading. The court has indicated the lack of precedential value in a case

submitted on agreed stipulations of fact, without trial or briefing or opinion by the court. *See Siemens America Inc. and Siemens Corp. v. United States*, 2 CIT 136, 140 (1981), aff'd, 692 F. 2d 1382 (Fed. Cir 1982); *ee also Bergen Hudson Roofing Co., Inc., v. United States*, 13 CIT 1077, 1078 (1989). An agreement to stipulate may be a culmination of various factors. Further, the agreement is binding only with respect to the specific entries covered by the merchandise at issue.

As no litigation regarding the substantive issues occurred and the specific entries to which that judgment is binding are not at issue here, the commentors reliance on that judgment is misplaced.

HOLDING:

The "Stencils and Pencils" set is classified as a drawing set in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other."

EFFECT ON OTHER RULINGS:

HQ 951965, dated September 18, 1992, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966197
July 21, 2003
CLA-2: RR:CR:GC 966197 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MS. VIVIEN GONZALEZ
C-AIR INTERNATIONAL, INC.
11222 S. La Cieneca Blvd.
Suite 470
Inglewood, CA 90304

RE: "Stencils & Pencils"; HQ 950926 revoked

DEAR MS. GONZALEZ,

On March 31, 1992, this office issued to you Headquarters ruling letter (HQ) 950926, on behalf of Lisa Frank, Inc., which classified, in part, the "Stencil & Pencils" activity set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in subheading 9503.90.60, HTSUS (now 9503.90.00), as a toy. HQ 951965, dated September 18, 1992, affirmed that decision. We have reconsidered HQ 950926 and HQ 951965 and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were

received in response to the notice, two of which were in opposition to the proposed action. Comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

The merchandise at issue is a set consisting of a 6.5″ X 3.5″ yellow plastic stencil depicting a rough outline of a farm and farm animals, four colored pencils, and three erasers (shaped like a cow, a rabbit, and a heart).

HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, revokes HQ 951965, which classified the identical merchandise at issue in HQ 950926. The product was classified as a set for retail sale according to General Rule of Interpretation 3(b). The stencil was determined to impart the essential character of the set, and the stencil was classified under heading 9503, HTSUS, as a toy. In HQ 966198, Customs determines that stencils and stencils sets have been incorrectly classified as toys and that stencils are drawing instruments classified in subheading 9017.20.80, HTSUS.

The analysis applied in the final revocation ruling HQ 966198 applies here. The **LAW AND ANALYSIS** section of the final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final revocation and these rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

In the proposed version of this ruling, we stated the ruling was a proposed modification of HQ 950926. However, as there is only one product at issue in that ruling, it should have been a proposed revocation. The error was clerical. This final ruling corrects the error and revokes HQ 950926.

HOLDING:

The "Stencils and Pencils" set is classified as stencils in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

HQ 950926, dated March 31, 1992 is hereby REVOKED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966193
July 21, 2003
CLA-2: RR:CR:GC 966193 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MS. ROSE BELTRAN
ALLIANCE CUSTOMS CLEARANCE, INC.
100 Oceangate Plaza 200
Long Beach, California 90802

RE: "Nova's Ark Surprise Stencils"; PD F85514 revoked

DEAR MS. BELTRAN,

On May 2, 2000, the Port of New York issued to you on behalf of Tricon Restaurant Services, PD F85514, which classified "Nova's Ark Surprise Stencils" in subheading 9503.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were received in response to the notice, two of which were in opposition to the proposed action. Comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

"Nova's Ark Surprise Stencils" is a set of three stencils made of plastic. Each stencil is 4.25" square and is divided into four numbered sections. The sections are oriented around a central locator point and each section has cutouts of various designs. A child will use one stencil and starting with the first section trace the cutouts in that section onto paper. Each section on the stencil is in turn located using the same location point and their designs are traced on top of the preceding design. When all four sections have been completed an image of a robotic creature will appear on the paper. Each stencil has a different creature.

In HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, Customs revokes HQ 951965, which classified a stencil set. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 sets forth Customs position regarding stencils and stencils sets, namely that Customs no longer believes that an amusing design is equivalent to being "designed for the amusement of children and adults" for classification as a toy of heading 9503, HTSUS. General Explanatory Notes to Chapter 95, HTSUS. Rather, stencils and stencil sets are classified as drawing instruments under heading 9017, HTSUS, pursuant to the analysis set forth in the final revocation ruling HQ 966198. T

he analysis applied in HQ 966198 applies here with respect to the scope of headings 9503 and 9017, HTSUS, in relation to stencils. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final revocation and rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

HOLDING:

"Nova's Ark Surprise Stencils" are classified as stencils in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or in-

cluded elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

PD F85514, dated May 2, 2000, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966192
July 21, 2003
CLA-2: RR:CR:GC 966192 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

RE: "Easter" stencil set; PD F87884 revoked

DEAR MR. HOFFACKER,

On June 30, 2000, the Port of New York issued to you on behalf of Consolidated Stores, Inc., PD F87884, which classified an "Easter" stencil set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in subheading 9503.90.00, HTSUS, as a toy. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were received in response to the notice, two of which were in opposition to the proposed action. Comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

The merchandise at issue is two 27-piece "Easter" stencil sets, identified by item number 001440. Each set is part of an assortment containing stencils that depict various items such as rabbit heads, baskets, eggs, etc.

In HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, Customs revokes HQ 951965, which classified a stencil set. The product was classified as a set for retail sale according to General Rule of Interpretation 3(b). The stencil was determined to impart the essential character of the set, and the stencil was classified under heading 9503, HTSUS, as a toy. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 sets forth Customs position regarding stencils and stencils sets, namely that Customs no longer believes that an amusing design is equivalent to being "designed for the amusement of children and adults" for classification as a toy of heading 9503, HTSUS. General Explanatory Notes to Chapter 95, HTSUS. Rather, stencils and stencil sets are classified as drawing instruments under heading 9017, HTSUS, pursuant to the analysis

set forth in the final revocation ruling HQ 966198.

The analysis applied in HQ 966198 applies here with respect to the scope of headings 9503 and 9017, HTSUS, in relation to stencils. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final revocation and rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

HOLDING:

"Easter" stencil sets are in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

PD F87884, dated June 30, 2000, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966195
July 21, 2003
CLA-2: RR:CR:GC 966195 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MR. FRED SHAPIRO
FASCO (USA) LTD.
39 E. Hanover Avenue
Morris Plains, NJ 07950

RE: "Art To Go, Pencils and Stencils;" NY 811162 modified

DEAR MR. SHAPIRO,

On June 20, 1995, the Director, National Commodity Specialist Division issued to you New York Ruling Letter (NY) 811162, which classified, in relevant part, a stencil set in subheading 9503.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were received in response to the notice, two of which were in opposition to the proposed action. Comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

The relevant merchandise is the "Art To Go, Pencils and Stencils" set, which consists of 6 colored pencils, 6 plastic stencils, 1 pad of paper and a folding plastic carry

case. The stencils depict various human and animal figures and impart the essential character of this retail packaged set.

HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, revokes HQ 951965, which classified a stencil set similar to the one at issue in NY 811162. The product was classified as a set for retail sale according to General Rule of Interpretation 3(b). The stencil was determined to impart the essential character of the set, and the stencil was classified under heading 9503, HTSUS, as a toy. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 sets forth Customs position regarding stencils and stencils sets, namely that Customs no longer believes that an amusing design is equivalent to being "designed for the amusement of children and adults" for classification as a toy of heading 9503, HTSUS. General Explanatory Notes to Chapter 95, HTSUS. Rather, stencils and stencil sets are classified as drawing instruments under heading 9017, HTSUS, pursuant to the analysis set forth in the final revocation ruling HQ 966198.

The analysis applied in HQ 966198 applies here with respect to the scope of headings 9503 and 9017, HTSUS, in relation to stencils. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final revocation and rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

HOLDING:

The "Art To Go, Pencils and Stencils" set is classified in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

NY 811162, dated June 20, 1995, is hereby MODIFIED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966194
July 21, 2003
CLA-2: RR:CR:GC 966194 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MR. MICHAEL MERCER
CORBETT INTERNATIONAL, INC. (Imports)
Cargo Service Building 80, JFK International Airport
Jamaica, NY 11430

RE: Incomplete "Blopen" play set; stencils; NY E87868, NY F85077 and G80679 modified

DEAR MR. MERCER,

On October 15, 1999, the Director, National Commodity Specialist Division issued to you on behalf of P & M Products USA, Inc. New York ruling letter (NY) E87868, which classified, in relevant part, paperboard stencils in subheading 9503.90.00, Har-

monized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on May 21, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 21. Three comments were received in response to the notice, one of which was from you, identifying NY F85077, issued to you on April 25, 2000, and NY G80679, issued to you on September 6, 2000, as requiring modification pursuant to the notice. The other comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

In NY E87868, the importer had decided to import the components of a "Blopen" set without the "Blopen." Therefore, the set could not be a "set for retail sale" in its condition as imported, and the various components were separately classified. "Cases" containing the remaining articles included a cardboard packing frame which doubles as a "desk" with holes punched out to hold pens, paperboard stencils and pictures to color.

NY F85077 and NY G80679 also classified components of "Blopen" sets when imported individually. The stencils in these two rulings were classified in subheading 4823.90.85, HTSUS, as other articles of paper or paperboard.

In HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, Customs revokes HQ 951965, which classified a stencil set. The **LAW AND ANALYSIS** section of the final revocation ruling HQ 966198 sets forth Customs position regarding stencils and stencils sets, namely that Customs no longer believes that an amusing design is equivalent to being "designed for the amusement of children and adults" for classification as a toy of heading 9503, HTSUS. General Explanatory Notes to Chapter 95, HTSUS. Rather, stencils and stencil sets are classified as drawing instruments under heading 9017, HTSUS, pursuant to the analysis set forth in the final revocation ruling HQ 966198.

The analysis applied in HQ 966198 applies here with respect to the scope of headings 9503 and 9017, HTSUS, in relation to stencils. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final modification and rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

HOLDING:

The paperboard stencils are classified in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

NY E87868, dated October 15, 1999, NY F85077, dated April 25, 2000, and NY G80679, dated September 6, 2000, are hereby MODIFIED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966191
July 21, 2003
CLA-2: RR:CR:GC 966191 DBS
CATEGORY: Classification
TARIFF NO.: 9017.20.80

MR. RYAN MCCLURE
CREATA PROMOTION
865 South Figueroa Street
Suite 1300
Los Angeles, CA 90017

RE: Stencils; NY H88793 modified

DEAR MR. MCCLURE

On March 1, 2002, this office issued to you New York (NY) H88793, classifying various products featuring McDonald's restaurant cartoon characters under the Harmonized Tariff Schedule of the United States (HTSUS). One of the products, a plastic stencil, was classified as a toy under subheading 9503.90.00, HTSUS. We have reconsidered NY H88793 and have determined the classification of the stencil to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published in the CUSTOMS BULLETIN on May 21, 2003, Volume 37, Number 21. Three comments were received in response to the notice, two of which were in opposition to the proposed action. Comments have been addressed in accompanying revocation ruling HQ 966198, dated the same date of this ruling.

FACTS:

The relevant merchandise at issue is a Ronald McDonald(tm) Stencil. It consists of two red square shaped plastic stencils that measure approximately 2-3/4″ on all sides and depict the face of Ronald McDonald™.

In HQ 966198, the proposed version of which was published along with the proposed version of the instant ruling, Customs revokes HQ 951965, which classified a stencil set. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 sets forth Customs position regarding stencils and stencils sets, namely that Customs no longer believes that an amusing design is equivalent to being "designed for the amusement of children and adults" for classification as a toy of heading 9503, HTSUS. General Explanatory Notes to Chapter 95, HTSUS. Rather, stencils and stencil sets are classified as drawing instruments under heading 9017, HTSUS, pursuant to the analysis set forth in the final revocation ruling HQ 966198.

The analysis applied in HQ 966198 applies here with respect to the scope of headings 9503 and 9017, HTSUS, in relation to stencils. The **LAW AND ANALYSIS** section of final revocation ruling HQ 966198 is hereby incorporated by reference. A copy of that ruling is enclosed. The final modification and rulings will be published in a forthcoming issue of the CUSTOMS BULLETIN.

HOLDING:

The Ronald McDonald™ Stencil is classified in subheading 9017.20.80, HTSUS, which provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other."

EFFECT ON OTHER RULINGS:

NY H88793, dated March 1, 2002, is hereby MODIFIED. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

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19 C.F.R. PART 177

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AUTOMOTIVE SEAT ADJUSTERS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to tariff classification of automobile and go cart seat adjusters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two ruling letters and modify another ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of automobile and go cart seat adjusters, and to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before September 5, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Commercial Rulings Division, (202) 572–8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two ruling letters and modify another ruling letter pertaining to the tariff classification of automobile and go cart seat adjusters. Although in this notice Customs is specifically referring to three rulings, HQ 962046, HQ 961652 and NY 815567, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. In this respect, two additional notices are being published in this issue of the *Customs Bulletin*, which identify other proposed modifications and/or revocations of rulings on this merchandise. One notice proposes to modify NY 88184 and revoke NY 88186 pursuant to the analysis in proposed HQ 966036. The second notice proposes to modify NY H88185, NY H88183 and NY H88554, pursuant to the analysis in proposed HQ 965970, HQ 966001 and HQ 966113, respectively. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. Other than as identified above, no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice or the other two notices, should advise Customs during this notice period. All of the above-identified rulings will be the subject of one final notice. Any

comments received on one notice will be considered as comments on all three notices.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 962046, dated January 13, 1999, and HQ 961652, dated January 11, 1999, set forth as "Attachment A" and "Attachment B", respectively, to this document, Customs found, among other things, that an assembled automobile seat adjuster was classified in subheading 8708.29.50, HTSUS, as other parts and accessories of motor vehicle bodies. In NY 815567, dated November 2, 1995, set forth as "Attachment C" to this document, Customs found that a go cart seat adjuster was likewise classified in subheading 8708.29.50, HTSUS.

Customs has reviewed the matter and determined that the correct classification of fully assembled automobile and go cart seat adjusters is in subheading 9401.90.10, HTSUS, which provides for parts of seats of a kind used for motor vehicles.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 961652 and NY 815567 and to modify HQ 962046 (and to revoke or modify the rulings identified in the other two notices in this *Customs Bulletin* on this merchandise), as well as any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in proposed Headquarters Ruling Letters (HQ) 966450, set forth as "Attachment D", HQ 966449, set forth as "Attachment E" and HQ 966201, set forth as "Attachment F", respectively, to this document, and the other notices. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 16, 2003

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 962046
JANUARY 13, 1999
CLA-2 RR:CR:GC 962046 JAS
CATEGORY: Classification
TARIFF NO.: 8708.29.50

PORT DIRECTOR OF CUSTOMS
477 Michigan Ave., Suite 200
Detroit, Michigan 48226

RE: PRD 3801–98–102222; Seat Adjuster, Track and Frame Assembly for Adjusting an Automobile Seat; Subheading 9401.90.10, Parts of Seats of a Kind Used for Motor Vehicles; Subheading 8302.42.30, Base Metal Mountings and Fittings Suitable for Furniture; Other Parts and Accessories of Bodies; HQ 961652, NY 815567; Seat Recliner, Dump Recliner, Latch Assembly, Active Slider, Handle Assembly; Denial of Protest for Failure to Provide Evidence in Support of Claim, 19 CFR 174.13(a)(6)

DEAR PORT DIRECTOR:

This is our decision on Protest 3801–98–100222, filed against your classification under the Harmonized Tariff Schedule of the United States (HTSUS), of automobile seat adjusters and related articles. The entries under protest were liquidated within 90 days of this protest which was timely filed on April 24, 1998.

FACTS:

The merchandise in issue is identified on the Customs Form 6445 as seat adjusters, dump recliners, active sliders, seat recliners, latch assemblies, reclining bench and pivot "assy," seat track, release handle, and handle assembly. Only the seat adjuster is pictured in the file. There is no literature on the other articles nor are they further described.

The seat adjuster is a rectangular frame of base metal, open on one end, with a base metal connecting rod between the short sides. Designed to be bolted to the floor of an automobile, the device has a grooved track on one or both of the short sides that permits an automobile seat to move forward and reverse. A spring-loaded knob or lever allows the occupant to adjust the seat.

The articles under protest were entered under a provision in HTS heading 9401 for parts of seats suitable for motor vehicles. Your office determined that the seat adjuster, seat track, latches and recliners were parts of general use suitable for furniture, and classified those articles in liquidation under the appropriate provision in HTS heading 8302. Your office now believes that the seat track may be a motor vehicle part or accessory of heading 8708.

The provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles for furniture * * * coachwork * * * ; and base metal parts thereof:
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc

* * * * * * *

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies(including cabs):
8708.29.50	Other
	Other parts and accessories:
8708.99	Other:
8708.99.80	Other
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

ISSUE:

Whether seat adjusters for automobiles, as described, are provided for in heading 8302; whether they are parts or accessories for tariff purposes.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

As to the articles classified in provisions of heading 8302, the terms mountings and fittings are not defined in any legal note, nor do standard lexicons identify them in any detail sufficient to permit us to establish their common meaning. The Harmonized Commodity Description and Coding System Explanatory Notes, which Customs always consults in examining the scope of an HTSUS provision, are likewise not helpful. The ENs list a variety of articles that are included within heading 8302; but, because these articles are not described, we are unable to compare them with the merchandise in this protest. The instant slide adjusters are designed to be bolted to the floor of an automobile. Because there is no indication that they are suitable for any of the articles named in the 8302 heading text, the applicability of that heading in this case is inconclusive.

As to the protestant's claim under heading 9401, a "part," for tariff purposes, is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. In this case, despite the fact an automobile seat can fit into a slide adjuster and be affixed thereto, it is not necessary to an automobile seat, which is otherwise complete and fully functional. Seat adjusters are not parts for tariff purposes.

Heading 8708 provides for parts and accessories for the motor vehicles of headings 8701 to 8705. The heading covers articles identifiable as being suitable for use solely or principally with the above-mentioned vehicles, and which are not excluded by any applicable section or chapter note. Although a seat adjuster is bolted to the floor of a motor vehicle, it is not part of an automobile body for the same reason it is not a part under heading 9401. However, an "accessory," for tariff purposes, is generally not necessary to the completion of the article it is used with. Accessories are of secondary importance, not essential in and of themselves. They must, however, add to the effectiveness of the article they are used with, for example, by making that article more convenient to use or by expanding its range of uses. Seat adjusters are not necessary to the completion of automotive bodies, but they expand the range of uses of automotive bodies by providing a base or frame for a seat. Only by being affixed to the floor can a seat adjuster provide stability and maneuverability to the seat. The seat adjusters are accessories for tariff purposes. Their design configuration leads us to conclude

they are principally, if not solely for use with motor vehicles of headings 8701 to 8705.

In HQ 962046, dated January 12, 1999, identical seat adjusters were found to be classified in subheading 8708.29.50, HTSUS. Likewise, in NY 815567, dated November 2, 1995, substantially similar merchandise for go-carts was found to be similarly classified.

With respect to the remaining articles, under 19 U.S.C. 1514(c)(1), a protest of a decision under subsection (a) of section 1514 must set forth distinctly and specifically each decision as to which protest is made. See United States v. Parksmith Corp., 514 F. 2d 1052, 62 CCPA 76 (1975), and related cases. In addition, the Customs Regulations require that a protest state the nature of, and justification for, the objection set forth distinctly and specifically with respect to each decision. 19 CFR 174.13(a)(6).

The scope of review in a protest filed under 19 U.S.C. 1514 is limited to the administrative record. Customs will consider all relevant allegations that are supported by competent evidence. In acting on a protest, however, Customs lacks the legal authority to assume facts and arguments that are not presented and, therefore, not in the official record.

In this case, protest is properly made against your decision to classify the articles in issue under subheading 8302.42.30, HTSUS. However, protestant has submitted no evidence in support of the claim under subheading 9401.90.10, HTSUS. Exclusive of the seat adjusters, there is no other evidence of record from which we can independently determine the validity of the claim.

HOLDING:

Under the authority of GRI 1, the seat adjusters are provided for in heading 8708. They are classifiable under subheading 8708.29.50, HTSUS, as other parts and accessories of bodies. Because the rate of duty under this provision is more than the claimed rate but less than the liquidated rate, the protest should be DENIED as to the seat adjusters, except to the extent that reclassification of the merchandise as indicated results in a partial allowance. With respect to the remaining articles, based on protestant's failure to comply with the requirements of 19 CFR 174.13(a), the protest should be DENIED.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 961652
JANUARY 11, 1999
CLA-2 RR:CR:GC 961652 JAS
CATEGORY: Classification
TARIFF NO.: 8708.29.50

PORT DIRECTOR OF CUSTOMS
477 Michigan Avenue, Suite 200
Detroit, Michigan 48226

RE: PRD 3801–97–102267; Seat Adjuster, Track and Frame Assembly for Adjusting an Automobile Seat; Subheading 9401.90.10, Parts of Seats of a Kind Used for Motor Vehicles; Subheading 8302.42.30, Base Metal Mountings and Fittings Suitable for Furniture; Other Parts and Accessories of Bodies; NY 815567

DEAR PORT DIRECTOR:

This is our decision on Protest 3801–97–102267, filed against your classification under the Harmonized Tariff Schedule of the United States (HTSUS), of automobile seat adjusters. Except for entry * * * 354–2, which was liquidated on December 20, 1996, the entries under protest were liquidated on March 7, 1997, and, for those entries, this protest was timely filed on June 4, 1997. The protest is untimely for entry * * * 354–2, and is denied for that entry.

FACTS:

The merchandise in issue is identified on the Customs Form 6445 as a seat adjuster. It is pictured as a rectangular frame of base metal, open on one end, with a base metal connecting rod between the short sides. Designed to be bolted to the floor of an automobile, the device has a grooved track on one or both of the short sides that permits an automobile seat to move forward and reverse. A spring-loaded knob or lever allows the occupant to adjust the seat.

The seat adjuster was entered under a provision of HTS heading 9401 for parts of seats suitable for motor vehicles. Your office believes that the seat adjuster is a part of general use suitable for furniture, and liquidated the entry under the appropriate provision in HTS heading 8302.

The provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles for furniture * * * coachwork * * * ; and base metal parts thereof:
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies(including cabs):
8708.29.50	Other
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

ISSUE:

Whether seat adjusters for automobiles, as described, are provided for in heading 8302; whether they are parts or accessories for tariff purposes.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

As to heading 8302, the liquidated provision, the terms mountings and fittings are not defined in any legal note, nor do standard lexicons identify them in any detail sufficient to permit us to establish their common meaning. The Harmonized Commodity Description and Coding System Explanatory Notes, which Customs always consults in examining the scope of an HTSUS provision, are likewise not helpful. The ENs list a variety of articles that are included within heading 8302; but, because these articles are not described, we are unable to compare them with the merchandise in this protest. The instant slide adjusters are designed to be bolted to the floor of an automobile. Because there is no indication that they are suitable for any of the articles named in the 8302 heading text, the applicability of that heading in this case is inconclusive.

As to the claim under heading 9401, a "part," for tariff purposes, is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. In this case, despite the fact an automobile seat can fit into a slide adjuster and be affixed thereto, it is not necessary to an automobile seat, which is otherwise complete and fully functional. Seat adjusters are not parts for tariff purposes.

Heading 8708 provides for parts and accessories for the motor vehicles of headings 8701 to 8705. The heading covers articles identifiable as being suitable for use solely or principally with the above-mentioned vehicles, and which are not excluded by any applicable section or chapter note. Although a seat adjuster is bolted to the floor of a motor vehicle, it is not part of an automobile body for the same reason it is not a part under heading 9401. However, an "accessory," for tariff purposes, is generally not necessary to the completion of the article it is used with. Accessories are of secondary importance, not essential in and of themselves. They must, however, add to the effectiveness of the article they are used with, for example, by making that article more convenient to use or by expanding its range of uses. Seat adjusters are not necessary to the completion of automotive bodies, but they expand the range of uses of automotive bodies by providing a base or frame for a seat. Only by being affixed to the floor can a seat adjuster provide stability and maneuverability to the seat. The seat adjusters are accessories for tariff purposes. Their design configuration leads us to conclude they are principally, if not solely for use with motor vehicles of headings 8701 to 8705.

In NY 815567, dated November 2, 1995, substantially similar merchandise for go-carts was found to be classified in subheading 8708.29.50, HTSUS.

HOLDING:

Under the authority of GRI 1, the seat adjusters are provided for in heading 8708. They are classifiable under subheading 8708.29.50, HTSUS, as other parts and accessories of bodies. Because the rate of duty under this provision is less than the liquidated rate, you should DENY the protest, except that reclassification of the seat adjusters as indicated results in a partial allowance.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web

at www.customs.ustreas.gov, by means the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 815567
November 2, 1995
CLA-2-87:R:N1:101 815567
CATEGORY: Classification
TARIFF NO.: 8708.29.5060

MR. HARRY BANK
SUGIHARA TRADING OF CALIFORNIA, INC.
3989 Centinela Avenue
Los Angeles, CA 90066

RE: The tariff classification of an automotive go-cart seat slide adjuster from Taiwan

DEAR MR. BANK:

In your letter dated April 26, 1995 you requested a tariff classification ruling.

The item in question is a slide adjuster for a go-cart seat; it consists of two individual pieces of silver metal. One of the pieces is 12″L X 1″W with a 12″L X 4/5″W track on one side. The second piece is identical to the first except that, approximately halfway down its length, a 12″L X 2 3/4″H lever with a 5″ spring is bolted to it. You state that the slide adjuster is imported as a set comprised of these two separate pieces and that it is used to adjust a go-cart seat to various fixed distances from the steering wheel.

The applicable subheading for the go-cart seat slide adjuster will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of * * * motor vehicles * * * : Other parts and accessories of bodies: Other: Other: Other. The rate of duty will be 3% *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212–466–5667.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966450
CLA-2 RR:CR:GC 966450 KBR
CATEGORY: Classification
TARIFF NO.: 9401.90.10

AEI-CARR
P.O. Box 33472
Detroit, MI 48232
Attn: J. Reed

RE: HQ 961652 Revoked; Automobile Seat Adjuster

DEAR J. REED:

This is in reference to HQ 961652, issued to you, on January 11, 1999, on behalf of your client, Lear Seating Corporation, concerning Protest 3801–97–102267. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of an automobile seat adjuster. We have reviewed HQ 961652 and determined that the classification provided for the automobile seat adjuster is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were subject of Protest 3801–97–102267.

FACTS:

In HQ 961652, it was determined that the automobile seat adjuster was classifiable in subheading 8708.29.50, HTSUS, as parts and accessories of motor vehicles, other parts and accessories of bodies, other. We have reviewed that ruling and determined that the classification of the automobile seat adjuster is incorrect. This ruling sets forth the correct classification.

The article at issue in HQ 961652 was described as a rectangular frame of base metal, open on one end, with a base metal connecting rod between the short sides. The article was designed to be bolted to the floor of an automobile. There is a grooved track on one or both of the short sides that permits an automobile seat to move forward and reverse. A spring-loaded knob or lever allows the occupant to adjust the seat.

ISSUE:

Whether automobile seat adjusters are classifiable as parts of seats under heading 9401, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles for furniture * * * coachwork * * * ; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or zinc
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc

* * * * * * *

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
	Other parts and accessories:
8708.99	Other:
8708.99.80	Other

* * * * * * *

9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

First, we look at whether, because they are involved in attaching a seat to a vehicle, the seat adjusters can be considered a "mounting" of heading 8302, HTSUS. Further, if the seat adjusters are classifiable in heading 8302, Section XVII, Note 2(b) excludes from heading 8708 parts of general use provided for in heading 8302.

"Parts of general use" are defined, for purposes of the entire HTSUS, in Note 2, Section XV, HTSUS, as including, among other things, base metal or plastic articles of heading 8302, HTSUS. Heading 8302 includes, among other things, base metal mountings, fittings and similar articles suitable for coachwork or the like.

Note 2 to Section XVII, which includes Chapter 87, provides, in pertinent part, that:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *
>
> (b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39)[.]

Similarly, Note 1(d) to Chapter 94, HTSUS, provides, in pertinent part, that:

> 1. This chapter does not cover:
>
> * * * * * * *
>
> (d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)[.]

The general ENs to Section XV provide, in pertinent part, that:

> C) PARTS OF ARTICLES
>
> In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.
>
> However, parts of general use (as defined in Note 2 to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

The ENs to Section XV, which includes Chapter 83, provide, in pertinent part, that:

1. This section does not cover:

* * * * * * *

(g) Assembled railway or tramway track (heading 8608) *or other articles of section XVII* (vehicles, ships and boats, aircraft)[emphasis added].

* * * * * * *

2. Throughout the tariff schedule, the expression "parts of general use" means:

* * * * * * *

(c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306.

The ENs to heading 8302, HTSUS, provide, in pertinent part, that:

This heading covers general-purpose classes of base metal accessory fittings and mountings, such as are used largely on * * * coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (*e.g.*, door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * * * * * *

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (*e.g.*, motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII** [bold emphasis in original]. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

Note 87.08, Chapter 87, provides, in part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05 **provided** the parts and accessories fulfill **both** the following conditions [emphasis in original]:

(i) They must be identifiable as being suitable for use solely

or principally with the above-mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

* * * * * * *

(B) Parts of bodies and associated accessories, for example * * * floor boards[.]

In view of these very clear statutory provisions, if a good is a base metal mounting and fitting described by heading 8302, it **must** be classified in heading 8302, regardless of whether it is suitable for use with a motor vehicle.

The common characteristic of these articles (parts of general use as contemplated by Note 2 to Section XV) and those classifiable under heading 8302, HTSUS, is that they are articles of base metal (or plastic) which provide the function of attaching, fixing (in place), fitting, connecting, protecting, separating, binding, or stabilizing two separate articles together, or one to (or from) the other. We find that, because of the degree of manufacture, intended purpose, and condition as imported, that the fully as-

sembled seat adjuster under consideration is not classifiable as a part of general use under heading 8302, HTSUS.

HQ 961652 discussed the difference between a "part" and an "accessory." HQ 961652 defined an accessory as:

> [A]n "accessory," for tariff purposes, is generally not necessary to the completion of the article it is used with. Accessories are of secondary importance, not essential in and of themselves. They must, however, add to the effectiveness of the article they are used with, for example, by making that article more convenient to use or by expanding its range of uses.

HQ 962046 then stated that the seat adjusters are not necessary to the completion of automotive bodies, but they expand the range of uses of automotive bodies by providing a base or frame for a seat. Only by being affixed to the floor can a seat adjuster provide stability and maneuverability to the seat. HQ 962046 concludes that the seat adjusters are accessories for tariff purposes.

We disagree with this conclusion concerning the automobile seat adjuster. As HQ 961652 pointed out, a "part," for tariff purposes, is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. In the case of the automobile seat adjuster, we find that the ability to adjust an automobile seat is a necessary component of the seat. First, we distinguish an "automobile seat" from other types of "seat". An automobile seat has certain special requirements that other seats may not have. EN 83.02 pointed out that there are different types of seats and, further, that these seats may have different essential parts. The exclusion in this EN states in pertinent part:

> This heading covers general-purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc* * * * This heading does not, however, extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs.

The EN indicates that there is a specific article, a "revolving chair". Further, the "swivel" is an essential part to this specific type of seat. *See also* 9401.30, HTSUS, classifying "swivel seats" as a distinct type of seat.

In a similar way, the automobile seat is another specific type of seat. Further, the seat adjuster for an automobile seat is an essential part of the seat in the similar way that the swivel is an essential part of a revolving chair. The ability to adjust the automobile seat in and out and/or up and down is an essential requirement. Without the adjustability of the automobile seat, drivers of different sizes can not safely operate the vehicle. A shorter person could not reach the gas or brake pedals or the steering wheel, while a taller person could not release pressure or transfer their foot from one pedal to the other pedal. A larger person might be pressed against the steering wheel and not be able to turn the steering wheel. Therefore, we find that the automobile seat adjuster is an essential "part" of an "automobile seat", not an "accessory." Thus, noting EN 83.02, the automobile seat adjuster is an essential part of the article and may not be classified in chapter 83.

Since we have determined that the automobile seat adjuster is a part of a specific type of seat—an automobile seat, we find that it is provided for in heading 9401, HTSUS, as seats and parts thereof. Under GRI 3(a), heading 9401 provides a more specific description for automobile seat adjusters than does heading 8708. Therefore, the fully assembled automobile seat adjusters are classifiable under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 3801–97–102267, as Customs no longer has jurisdiction over those entries. *See San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

Fully assembled automobile seat adjusters are classified under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

EFFECT ON OTHER RULINGS:

HQ 961652, dated January 11, 1999, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966449
CLA-2 RR:CR:GC 966449 KBR
CATEGORY: Classification
TARIFF NO.: 9401.90.10

MR. HARRY BANK
SUGIHARA TRADING OF CALIFORNIA, INC.
3989 Centinela Avenue
Los Angeles, CA 90066

RE: NY 815567 Revoked; Go-Cart Seat Adjuster

DEAR MR. BANK:

This is in reference to New York Ruling Letter (NY) 815567, issued to you by the Customs National Commodity Specialist Division, New York, on November 2, 1995. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a go-cart seat adjuster. We have reviewed NY 815567 and determined that the classification provided is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY 815567, it was determined that the go cart seat adjuster was classifiable in subheading 8708.29.50, HTSUS, as parts and accessories of motor vehicles, other parts and accessories of bodies, other. The seat adjuster consisted of two individual pieces of silver metal. One of the pieces was 12 inches long and one inch wide, with a 12 inch long and 3/4 inch wide track on one side. The second piece was identical to the first, except that approximately half way down its length a 12-inch long and 2 3/4 inch high lever with a 5-inch spring was bolted to it.

ISSUE:

Whether the go-cart seat adjusters are classified as parts of seats under heading 9401, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles for furniture * * * coachwork * * * ; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or zinc
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc
* * *	* * * * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
	Other parts and accessories:
8708.99	Other:
8708.99.80	Other
* * *	* * * * * * *
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

First, we look at whether, because the seat adjusters are involved in attaching a seat to a vehicle, the seat adjusters can be considered a "mounting" pursuant to heading 8302, HTSUS. Further, if the seat adjusters are classifiable in heading 8302, Section XVII, Note 2(b) excludes from heading 8708 parts of general use provided for in heading 8302.

"Parts of general use" are defined, for purposes of the entire HTSUS, in Note 2, Section XV, HTSUS, as including, among other things, base metal or plastic articles of heading 8302, HTSUS. Heading 8302 includes, among other things, base metal mountings, fittings and similar articles suitable for coachwork or the like.

Note 2 to Section XVII, which includes Chapter 87, provides, in pertinent part, that:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *
>
> (b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39)[.]

Similarly, Note 1(d) to Chapter 94, HTSUS, provides, in pertinent part, that:

> 1. This chapter does not cover:
>
> * * * * * * *
>
> (d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)[.]

The general ENs to Section XV provide, in pertinent part, that:

C) PARTS OF ARTICLES

In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.

However, parts of general use (as defined in Note 2 to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

The ENs to Section XV, which includes Chapter 83, provide, in pertinent part, that:

1. This section does not cover:

* * * * * * *

(g) Assembled railway or tramway track (heading 8608) *or other articles of section XVII* (vehicles, ships and boats, aircraft)[emphasis added].

* * * * * * *

2. Throughout the tariff schedule, the expression "parts of general use" means:

* * * * * * *

(c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306.

The ENs to heading 8302, HTSUS, provide, in pertinent part, that:

This heading covers general-purpose classes of base metal accessory fittings and mountings, such as are used largely on * * * coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (*e.g.*, door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * * * * * *

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (*e.g.*, motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII** [bold emphasis in original]. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

Note 87.08, Chapter 87, provides, in part:

> This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05 **provided** the parts and accessories fulfill **both** the following conditions [emphasis in original]:
>
> (i) They must be identifiable as being suitable for use solely
>
> or principally with the above-mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

* * * * * * *

(B) Parts of bodies and associated accessories, for example * * * floor boards[.]

In view of these very clear statutory provisions, if a good is a base metal mounting and fitting described by heading 8302, it **must** be classified in heading 8302, regardless of whether it is suitable for use with a motor vehicle.

The common characteristic of these articles (parts of general use as contemplated by Note 2 to Section XV) and those classifiable under heading 8302, HTSUS, is that they are articles of base metal (or plastic) which provide the function of attaching, fixing (in place), fitting, connecting, protecting, separating, binding, or stabilizing two separate articles together, or one to (or from) the other. We find that, because of the degree of manufacture, intended purpose, and condition as imported, that the seat adjuster under consideration is not classifiable as a part of general use under heading 8302, HTSUS.

Next, we look at the difference between a "part" and an "accessory." An "accessory," for tariff purposes, is generally not necessary to the completion of the article it is used with. Accessories are of secondary importance, not essential in and of themselves. They must, however, add to the effectiveness of the article they are used with, for example, by making that article more convenient to use or by expanding its range of uses.

A "part," for tariff purposes, is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. In the case of the go-cart seat adjuster, we find that the ability to adjust a go-cart seat is a necessary component of the seat. First, we distinguish a "go cart seat" from other types of "seat." A go-cart seat has certain special requirements that other seats may not have. EN 83.02 pointed out that there are different types of seats and, further, that these seats may have different essential parts. The exclusion in this EN states in pertinent part that heading 8302, HTSUS, does not "extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs (see above)."

The EN indicates that there is a specific article, a "revolving chair." Further, the "swivel" is an essential part to this specific type of seat. *See also* 9401.30, HTSUS, classifying "swivel seats" as a distinct type of seat.

In a similar way, the go-cart seat is another specific type of seat. Further, the seat adjuster for a go-cart seat is an essential part of that seat in the similar way that the swivel is an essential part of a revolving chair. The ability to adjust the go-cart seat in and out is an essential requirement. Without the adjustability of the go-cart seat, drivers of different sizes can not safely operate the vehicle. A shorter person could not reach the gas or brake pedals or the steering wheel, while a taller person could not release pressure or transfer their foot from one pedal to the other pedal. A larger person might be pressed against the steering wheel and not be able to turn the steering wheel. Therefore, we find that the go cart seat adjuster is an essential "part" of a "go cart seat", not an "accessory." Thus, noting EN 83.02, the go-cart seat adjuster is an essential part of the article and may not be classified in chapter 83.

Since we have determined that the go-cart seat adjuster is a part of a specific type of seat—a go-cart seat, we find that it is provided for in heading 9401, HTSUS, as seats and parts thereof. Under GRI 3(a), heading 9401 provides a more specific description for go-cart seat adjusters than does heading 8708, HTSUS, parts and accessories of motor vehicles. Therefore, the go-cart seat adjuster is classifiable under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

HOLDING:

Go cart seat adjusters are classifiable under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

EFFECT ON OTHER RULINGS:
NY 815567 dated November 2, 1995, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966201
CLA-2 RR:CR:GC 966201 KBR
CATEGORY: Classification
TARIFF NO.: 9401.90.10

AEI CUSTOMS BROKERAGE SERVICES
P.O. Box 33479
Detroit, MI 48216
Attn: Bonnie Kidd

RE: HQ 962046 Modified; Automobile Seat Adjuster

DEAR MS. KIDD:

This is in reference to HQ 962046, on Protest 3801–98–100222, dated January 13, 1999, and issued to you by the Port Director, Detroit, with the CF 19 on January 24, 2000. The protest was filed on behalf of your client, Lear Seating Corporation. This decision concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of, among other things, a fully assembled automobile seat adjuster. We have reviewed HQ 962046 and determined that the classification provided for the fully assembled automobile seat adjuster is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were the subject of Protest 3801–98–100222.

FACTS:

HQ 962046 concerned automobile seat adjusters, dump recliners, active sliders, seat recliners, latch assemblies, reclining bench and pivot "assy," seat track, release handle, and handle assembly. Only the fully assembled automobile seat adjuster is at issue in this ruling.

In HQ 962046, it was determined that the fully assembled automobile seat adjuster was classifiable in subheading 8708.29.50, HTSUS, as other parts and accessories of motor vehicle bodies. We have reviewed that ruling and determined that the classification of the fully assembled automobile seat adjuster is incorrect. This ruling sets forth the correct classification.

ISSUE:

Whether fully assembled automobile seat adjusters are classifiable as parts of seats under heading 9401, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings and similar articles for furniture * * * coachwork * * * ; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.30	Of iron or steel, of aluminum or zinc
8302.42	Other, suitable for furniture:
8302.42.30	Of iron or steel, of aluminum or of zinc
* * * * * * *	
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
	Other parts and accessories:
8708.99	Other:
8708.99.80	Other
* * * * * * *	
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

First, we look at whether, because they are involved in attaching a seat to a vehicle, the seat adjusters can be considered a "mounting" of heading 8302, HTSUS. Further, if the seat adjusters are classifiable in heading 8302, Section XVII, Note 2(b) excludes from heading 8708 parts of general use provided for in heading 8302.

"Parts of general use" are defined, for purposes of the entire HTSUS, in Note 2, Section XV, HTSUS, as including, among other things, base metal or plastic articles of heading 8302, HTSUS. Heading 8302 includes, among other things, base metal mountings, fittings and similar articles suitable for coachwork or the like.

Note 2 to Section XVII, which includes Chapter 87, provides, in pertinent part, that:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * * * * *
>
> (b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39)[.]

Similarly, Note 1(d) to Chapter 94, HTSUS, provides, in pertinent part, that:

> 1. This chapter does not cover:
>
> * * * * * * *
>
> (d) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)[.]

The general ENs to Section XV provide, in pertinent part, that:

C) PARTS OF ARTICLES

In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.

However, parts of general use (as defined in Note 2 to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

The ENs to Section XV, which includes Chapter 83, provide, in pertinent part, that:

1. This section does not cover:

* * * * * * *

(g) Assembled railway or tramway track (heading 8608) *or other articles of section XVII* (vehicles, ships and boats, aircraft)[emphasis added].

* * * * * * *

2. Throughout the tariff schedule, the expression "parts of general use" means:

* * * * * * *

(c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306.

The ENs to heading 8302, HTSUS, provide, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on * * * coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (*e.g.*, door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * * * * * *

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (*e.g.*, motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII** [bold emphasis in original]. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

Note 87.08, Chapter 87, provides, in part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05 **provided** the parts and accessories fulfill **both** the following conditions [emphasis in original]:

(i) They must be identifiable as being suitable for use solely

or principally with the above-mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

* * * * * * *

(B) Parts of bodies and associated accessories, for example * * * floor boards[.]

In view of these very clear statutory provisions, if a good is a base metal mounting and fitting described by heading 8302, it **must** be classified in heading 8302, regardless of whether it is suitable for use with a motor vehicle.

The common characteristic of these articles (parts of general use as contemplated by Note 2 to Section XV) and those classifiable under heading 8302, HTSUS, is that they are articles of base metal (or plastic) which provide the function of attaching, fixing (in place), fitting, connecting, protecting, separating, binding, or stabilizing two separate articles together, or one to (or from) the other. We find that, because of the degree of manufacture, intended purpose, and condition as imported, that the fully assembled seat adjuster under consideration is not classifiable as parts of general use under heading 8302, HTSUS.

HQ 962046 discussed the difference between a "part" and an "accessory." HQ 962046 defined an accessory as:

> [A]n "accessory," for tariff purposes, is generally not necessary to the completion of the article it is used with. Accessories are of secondary importance, not essential in and of themselves. They must, however, add to the effectiveness of the article they are used with, for example, by making that article more convenient to use or by expanding its range of uses.

HQ 962046 then stated that seat adjusters are not necessary to the completion of automotive bodies, but they expand the range of uses of automotive bodies by providing a base or frame for a seat. Only by being affixed to the floor can a seat adjuster provide stability and maneuverability to the seat. HQ 962046 concluded that the seat adjusters are accessories for tariff purposes.

We disagree with this conclusion concerning the automobile seat adjuster. As HQ 962046 pointed out, a "part," for tariff purposes, is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. In the case of the automobile seat adjuster, we find that the ability to adjust an automobile seat is a necessary component of the seat. First, we distinguish an "automobile seat" from other types of "seat." An automobile seat has certain special requirements that other seats may not have. EN 83.02 pointed out that there are different types of seats and, further, that these seats may have different essential parts. The exclusion in this EN states in pertinent part:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc* * * * This heading does not, however, extend to goods forming an essential part of the structure of an article, such as window frames or swivel devices for revolving chairs.

The EN indicates that there is a specific article, a "revolving chair". Further, the "swivel" is an essential part to this specific type of seat. See also 9401.30, HTSUS, classifying "swivel seats" as a distinct type of seat.

In a similar way, the automobile seat is another specific type of seat. Further, the seat adjuster for an automobile seat is an essential part of the seat in the similar way that the swivel is an essential part of a revolving chair. The ability to adjust the automobile seat in and out and/or up and down is an essential requirement. Without the adjustability of the automobile seat, drivers of different sizes can not safely operate the vehicle. A shorter person could not reach the gas or brake pedals or the steering wheel, while a taller person could not release pressure or transfer their foot from one pedal to the other pedal. A larger person might be pressed against the steering wheel and not be able to turn the steering wheel. Therefore, we find that the automobile seat adjuster is an essential "part" of an "automobile seat", not an "accessory." Thus, noting EN 83.02, the automobile seat adjuster is an essential part of the article and may not be classified in chapter 83.

Since we have determined that the automobile seat adjuster is a part of a specific type of seat—an automobile seat, we find that it is more specifically provided for in heading 9401, HTSUS, as seats and parts thereof, than in heading 8708, HTSUS, as

parts and accessories of motor vehicles. Under GRI 3(a), heading 9401 provides a more specific description for automobile seat adjusters than does heading 8708. Therefore, the fully assembled automobile seat adjusters are classifiable under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 3801–98–100222, as Customs no longer has jurisdiction over those entries. *See San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

Fully assembled automobile seat adjusters are classifiable under subheading 9401.90.10, HTSUS, as parts of seats of a kind used for motor vehicles.

EFFECT ON OTHER RULINGS:

HQ 962046, dated January 13, 1999, is modified as to the fully assembled automobile seat adjuster.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton
Timothy C. Stanceu

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Decisions of the United States Court of International Trade

(Slip Op. 03–85)

UNITED STEELWORKERS OF AMERICA, LOCAL 1028, DISTRICT 11, AFL-CIO PLAINTIFF, *v.* ELAINE L. CHAO, U.S. SECRETARY OF LABOR, DEFENDANT.

Court File No. 02–00404

ORDER FOR FINAL JUDGMENT

GOLDBERG, *Judge:* Upon consideration of Plaintiff's Status Report Post-Remand, and upon consent of counsel, it is hereby,

ORDERED that FINAL JUDGMENT in this matter is hereby entered based upon the Department of Labor's June 25, 2003, Revised Determination on Remand certifying Plaintiff as eligible for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974 and NAFTA-TAA under Section 250 of the Trade Act of 1974.

ENTERED THIS 17th DAY OF JULY, 2003.

RICHARD W. GOLDBERG,
Senior Judge.

(Slip Op. 03–86)

FRONTIER INSURANCE COMPANY, A NEW YORK CORPORATION, REAL PARTY IN INTEREST, PLAINTIFF, *v.* THE UNITED STATES, DEFENDANT.

Court No. 95–08–01041

[Upon motions as to assessment of duties on imports of lizard skins from Argentina, summary judgment for the defendant.]

(Decided: July 17, 2003)

Law Offices of Elon A. Pollack, a P.C. (*Elon A. Pollack* and *Xinyu Li*) for the plaintiff.

Peter D. Keisler, Assistant Attorney General; *John J. Mahon*, Acting Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Amy M. Rubin*); Office of Assistant Chief Counsel, International Trade Litigation, U.S. Bureau of Customs and Border Protection (*Paula S. Smith*), of counsel, for the defendant.

OPINION

AQUILINO, *Judge:* The amended complaint filed on behalf of Frontier Insurance Company, a surety alleged to be the real party in interest, prays, among other things, for judgment

> overruling the appraisement, classification, and liquidation and * * * directing the reliquidation of the merchandise described on the entries involved herein, and for refund of duties accordingly,

based upon pleaded claims that that merchandise should have been classified either under (1) subheading 4107.29.30 or (2) 4103.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS") (1992) rather than the subheading 4107.29.60 decided upon by the U.S. Customs Service. Plaintiff's third pleaded cause of action is to the effect that the entries at issue should not have been assessed duties pursuant to the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather From Argentina*, 55 Fed.Reg. 40,212 (Oct. 2, 1990), of the International Trade Administration, U.S. Department of Commerce ("ITA").

I

Since joinder of issue on these claims, the plaintiff has interposed a uniquely-styled Motion for Summary Adjudication of Issue(s)[1]. On its part, the defendant has filed a "cross-motion" for summary judgment. These submissions each contain statements of facts alleged to be material yet not engendering issues requiring trial within the meaning of USCIT Rule 56(i), which since their filings has been relettered (*h*). Plaintiff's Separate Statement of Undisputed Material Facts is as follows:

> 1. The reptile[2] skins in issue were entered into the United States between the dates of September 30, 1992 and December 23, 1992* * * *
>
> 2. Customs classified the reptile skins under HTSUS 4107.29.60 as [ ] "fancy leather," at a rate of 2.4% *ad valorem*, and

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[1] In fact, the plaintiff specifically objects to defendant's characterization of this motion as one for summary judgment or partial summary judgment. *See* Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Summary Adjudication and Memorandum in Opposition to Defendant's Cross-Motion for Summary Judgment [hereinafter "Plaintiff's Reply"], p. 2, n. 1.

[2] Papers filed in this matter refer to *Tupinambis tequixin*, the tegu lizard of Colombia and north-central South America, whereas the court notes in passing that the much-rarer tegu lizard of Argentina is *Tupinambis merianae*. Perhaps, the skinning of one species spares the skinning of the other.

assessed countervailing duties in the amount of 14.9% *ad valorem* * * * *

3. The importer of record timely filed a protest to challenge Customs' classification and assessment of countervailing duties on the grounds that the skins should be classified under HTSUS 4107.29.30 at a rate of 5% *ad valorem*, or HTSUS 4103.20.00 "free of duty." * * *

4. Frontier timely paid the liquidated duties, including the countervailing duties, for all the entries which are the subject of this civil action, except Entry Nos. 328–0071094–2, 328–0070064–6, and 328–0071779–8. Frontier paid $3003.70 of the liquidated duties including countervailing duties for Entry No. 328–0071094–2.

* * * * * * *

5. On August 9, 1995, * * * Frontier, the importer's surety and real party in interest, timely filed the instant action, after Customs denied the importer of record's protest* * * *

6. By notice published in the Federal Register on August 1, 1997 * * * Commerce retroactively revoked its countervailing duty order on leather including lizard skins from Argentina.

7. According to the terms of the revocation notice, the Commerce Department found that the case of *Ceramica Regiomontana v. United States*, 64 F.3d 1579, 1582 (Fed. Cir. 1995) applied to its countervailing duty orders against Argentina.

8. * * * Commerce "* * * * determine[d] that based upon * * * *Ceramica*, it does not have the authority to assess countervailing duties on entries of merchandise covered by these orders occurring on or after September 20, 1991." * * *

9. All of the merchandise which is the subject of this case was entered after September 20, 1991* * * *

Citations omitted.

The defendant admits paragraphs 1 and 4 through 9; it also admits material aspects of paragraphs 2 and 3. Defendant's Statement of Additional Material Facts as to Which There Are No Genuine Issues to be Tried is:

1. At the time of entry, the countervailing duty order on Argentine leather was in effect.

2. No party sought review of the order for the period from January 1, 1992 through December 31, 1992.

3. * * * Commerce issued liquidation instructions for the period from January 1, 1992 through December 31, 1992 on December 14, 1993.

4. The entries were liquidated in accordance with Commerce's liquidation instructions* * * *

None of these averments is controverted by the plaintiff. However, it does claim that a genuine issue of material fact exists, which it summarizes as "whether the reptile skins were 'fancy' or 'not fancy' at the time of entry." Plaintiff's Reply, p. 13. *See generally id.* at 11–13.

II

That issue is indeed of genuine moment. As discussed hereinafter, it is the linchpin to this action.

The headings of HTSUS chapter 41, which encompasses "Raw Hides and Skins (Other Than Furskins) and Leather", not surprisingly, commence with raw hides and skins of bovine and equine animals (4101) and then cover raw skins of sheep or lambs (4102), other raw hides and skins (4103), leather of bovine and equine animals "without hair on" (4104), sheep or lamb skin leather "without wool on" (4105), goat or kidskin leather (4106), leather of other animals "without hair on" (4107), etc. Plaintiff's merchandise caused Customs to stop at that last heading, in particular subheading 4107.29.60 thereunder, to wit:

Leather of other animals, without hair on * * *:

* * * * * * *

Of reptiles:

* * * * * * *

Other:

* * * * * * *

Fancy ..... 2.4%[.]

A

Plaintiff's first pleaded cause of action would have the court settle on the line above this subheading, at 4107.29.30 in the Schedule, which applies to "Not fancy" reptile leather, albeit at a duty rate of five percent *ad valorem*, or more than double the rate Customs collected.

The Tariff Act of 1930, as amended, and the Customs Courts Act of 1980 entail significant waiver of the sovereign U.S. government's immunity, but those and other, related acts of Congress do not (and could not) waive the requirement of Article III of the Constitution that this Court of International Trade only hear and decide genuine cases and controversies. *See, e.g., 3V, Inc. v. United States*, 23 CIT 1047, 1048–49, 83 F.Supp.2d 1351, 1352–53 (1999), and cases cited therein.

Of course, genuine cases and controversies with the Service, which recently has become the Bureau of Customs and Border Protection, can and often do involve matters that are not just monetary. Stated

another way, their judicial resolution often leads to equitable and/or other relief not measured in dollars and cents. But this is not possible here. As quoted above, plaintiff's amended complaint seeks "refund of duties". Moreover, the party pressing this prayer is a surety, which makes no showing in its papers at bar of any interest in this action other than financial. Ergo, this court has no authority to grant relief upon plaintiff's first cause of action, asserted on its own.

B

The refund for which the plaintiff prays would include, however, the countervailing duties collected pursuant to the ITA's order, *supra*, the ambit of which seemingly has motivated counsel to press for classification under HTSUS subheading 4107.29.30 (as opposed to 4107.29.60) with its concomitant higher rate of duty. That is, the ITA specifically excluded from the order's coverage the "not fancy reptile leather" contemplated by plaintiff's preferred subheading. *See* 55 Fed.Reg. at 40,213 (Scope of Investigation). Hence, given the magnitude of additional, countervailing duties assessed pursuant to that order, 14.97 percent *ad valorem*, plaintiff's third alleged cause of action is at least a mathematical case or controversy. It is comprised of two claims, namely, the underlying goods upon entry were not fancy within the meaning of HTSUS subheading 4107.29.30, and Customs should not have collected countervailing duties on them.

(1)

The court's subject-matter jurisdiction for matters of classification under the HTSUS is pursuant to 28 U.S.C. §§ 1581(a), 2631(a). And, in light of the facts recited above, the court concludes that it can resolve the issue of the classifiable nature of the goods imported and also that it can do so by way of summary judgment. While that issue, as posited by the plaintiff, *supra*, is definitely the material one, it is not exclusively a matter of fact, given the existing law referred to hereinafter. Moreover, the court finds sufficient evidence already on the record via the parties' cross-motions to "determine 'whether the government's classification is correct, both independently and in comparison with the importer's alternative.' " *H.I.M. / Fathom, Inc. v. United States*, 21 CIT 776, 778, 981 F.Supp. 610, 613 (1997), quoting *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878, *reh'g denied*, 739 F.2d 628 (Fed.Cir. 1984). In other words, trial is not necessary because the court is unable to conclude that the parties' factual disagreement is "such that a reasonable trier of fact could return a verdict against the movant"[3] government.

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[3] *Ugg Int'l, Inc. v. United States*, 17 CIT 79, 83, 813 F.– Supp. 848, 852 (1993), quoting *Pfaff American Sales Corp. v. United States*, 16 CIT 1073, 1075 (1992).

Analysis of an issue of classification is a two-step process. First, the court must ascertain "the proper meaning of specific terms in the tariff provision". *David W. Shenk & Co. v. United States*, 21 CIT 284, 286, 960 F.Supp. 363, 365 (1997). That meaning is a question of law, and the court proceeds de novo pursuant to 28 U.S.C. § 2640. *E.g.*, *Russell Stadelman & Co. v. United States*, 23 CIT 1036, 1037, 83 F.Supp.2d 1356, 1357 (1999), *aff'd*, 242 F.3d 1044 (Fed.Cir. 2001). Second, the court must determine under which of those tariff terms the subject merchandise falls. *See, e.g.*, *Bausch & Lomb, Inc. v. United States*, 148 F.3d 1363, 1365 (Fed.Cir. 1998). This determination is also, ultimately, a question of law. *Id.* Summary judgment is appropriate "when there is no genuine dispute as to the underlying factual issue of exactly what the merchandise is". *Id.* Although there is a statutory presumption of correctness that attaches to the factual aspects of classification decisions by Customs per 28 U.S.C. § 2639(a)(1), that presumption does not apply where the court is presented with a question of law by a proper motion for summary judgment. *See, e.g.*, *Universal Elecs., Inc. v. United States*, 112 F.3d 488, 492 (Fed.Cir. 1997).

The General Rules of Interpretation ("GRI") of the HTSUS govern classification. *See, e.g.*, *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed.Cir. 1999). According to GRI 1, "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes". *E.g.*, *Vanetta U.S.A. Inc. v. United States*, 27 CIT ___, ___, Slip Op. 03–67, p. 8 (June 25, 2003), citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (Fed.Cir. 1998). Only after construing the language of a particular HTSUS heading should the court turn to an examination of its subheadings. *See* GRI 1, 3, 6. If the meaning of a term is not defined therein or in its legislative history, the correct one is its common meaning. *See, e.g.*, *Pillowtex Corp. v. United States*, 171 F.3d 1370, 1374 (Fed.Cir. 1999). To determine that common meaning, "the court may rely upon its own understanding of the terms used, and it may consult lexicographic and scientific authorities, dictionaries, and other reliable information". *Baxter Healthcare Corp. of Puerto Rico v. United States*, 182 F.3d 1333, 1338 (Fed.Cir. 1999), quoting *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed.Cir. 1988). The term's common and commercial meanings are presumed to be the same. *See, e.g.*, *Carl Zeiss, Inc. v. United States*, 195 F.3d at 1379.

Here, the parties agree that the lizard skins were treated prior to entry. In its Protest No. 2402–94–100028, the importer indicates that the skins had been drum-dyed.[4] The defendant argues that

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[4] *See* Defendant's Cross-Motion for Summary Judgment, Exhibit A. During drum-dyeing, leather that has undergone tanning is rotated in a drum containing hot water, dye and acid or "fatliquor" solutions. The mechanical action of spinning, in much the same manner as a conventional clothes-washing machine, provides penetration of the dye(s) into the leather, thereby coloring it. The process is "used on most types of leather with the exception of

drum-dyeing cannot proceed until skins have been tanned. *See* Defendant's Cross-Motion for Summary Judgment, p. 30. According to Sharphouse, Leather Technician's Handbook, pp. 6–7 (1971), leather processing occurs in three stages. During the first phase, designated "Before Tannage", the skin of an animal is removed; it is washed, cured, limed, dehaired (if necessary), defleshed, de-limed, and then pickled, drenched, or soured. During the second stage, called "Tannage", that skin is tanned by whatever method is appropriate for the type involved. The final phase is "After Tannage", during which the tanned leather may be dyed, fatliquored, dried, and finished.[5]

Having determined that HTSUS heading 4103 does not cover this case, the court turns to heading 4107, which both parties accept to the six-digit level of 4107.29. Concurring in their judgment, the court must determine whether "Not fancy" per subheading 4107.29.30 better classifies plaintiff's merchandise than does "Fancy" of subsequent subheading 4107.29.60.

Additional U.S. Note 1 to HTSUS chapter 41 defines the term

> "*fancy*" as applied to leather [to] mean[] leather which has been embossed, printed or otherwise decorated in any manner or to any extent (including leather on which the original grain has been accentuated by any process * * *).

Underscoring in original. In this matter, at the request of the importer for "further review"[6], the Customs laboratory in New Orleans examined the lizard skins at issue under a stereo microscope and found that they "ha[ve] a coating accentuating the grain on the surface" and were thus "fancy by tariff definition". *See* Defendant's Cross-Motion for Summary Judgment, Exhibit C, first page. Based on this finding, the Service determined, and the defendant presses now, that those skins were "otherwise decorated" within the meaning of this Additional Note 1.

The plaintiff counters that there remains an open and unresolved question of fact as to whether the "coating" was sufficient to constitute decoration or accentuation of the grain of the lizards' skins. *See generally* Plaintiff's Reply, pp. 11–13. According to the plaintiff, that was not sufficient, whereupon it is suggested that the entries were "crust"[7], which has been classified in one administrative decision as

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those which may suffer from the vigorous action, e.g., very thin tender skins may be torn, [or] snake skins or bellies may knot up". Sharphouse, Leather Technician's Handbook, p. 215 (1971).

[5] Despite this well-known, common processing, plaintiff's second alleged cause of action is to the effect that the lizard skins herein can be classified under HTSUS heading 4103, which states:

> Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split* * * [.]

On its face, this heading is inapposite since drum-dyeing occurred after those skins had been tanned. Thus, the GRI preclude further consideration of plaintiff's alternative classification under HTSUS subheading 4103.20.00.

[6] *See* Defendant's Cross-Motion for Summary Judgment, Exhibit B.

[7] "Crust" is defined as "10. Leather Manuf. The state of sheep or goat skins when merely tanned and left rough preparatory to being dyed or coloured", The Oxford English Dictionary, vol. IV, p. 88 (2d ed. 1989), and "6: the state of rough-tanned skins before they are dyed". Webster's Third New International Dictionary, p. 547 (1981). "Crust"

"not fancy"[8], and that the coating may be "merely a method of preservation from putrefaction"[9]. *See id.* at 12–13. The plaintiff cites *Leather's Best, Inc. v. United States*, 708 F.2d 715 (Fed.Cir. 1983), for the general proposition that courts require processing that is more than "slight" before an entry can be classified as "fancy". The court in that case, as the plaintiff itself points out, required merely a "scintilla" of evidence of decoration. 708 F.2d at 718 ("the process made [the leather] 'brighter,' which we consider to be at least a scintilla of decoration, all that is required").

To repeat, Additional U.S. Note 1 provides for leather that has been "otherwise decorated *in any manner or to any extent*"[10], which includes "leather on which the original grain *has been accentuated by any process*"[11]. It does not specify the type of process or coating used, nor does it refer to the extent to which the respective process has been employed. Dyeing, by definition, advances the leather beyond crust, and embellishes through a change in color, often profoundly. This court cannot find that such change does not amount to decoration and that this process did not accentuate the grain of the skins. Indeed, the scrutiny of the coating by the Customs laboratory that found it accentuated their grain bolsters this inability. Undoubtedly, these two factors, together or individually, constitute a "mere scintilla" of evidence that the lizard skins are decorated and therefore "fancy". Whereupon, this court holds the dyed, lizard-skin leather underlying this matter to be decorated and thus "fancy" within the meaning of HTSUS subheading 4107.29.60.

(2)

Were the correct classification "not fancy", as the plaintiff postulates, its merchandise would not have been within the scope of the ITA's countervailing-duty investigation, given that agency's specific exclusion of such reptile leather covered by HTSUS subheading 4107.29.30. But plaintiff's experienced counsel doubtless know that Commerce's reference to or reliance on the Tariff Schedule does not govern Customs' own, independent responsibilities thereunder. *See, e.g., Tak Fat Trading Co. v. United States*, 24 CIT 1376, 1379 (2000), and cases cited therein. On the other hand, once the ITA has reached a final determination of countervailable subsidy and set a duty

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has also been defined as "leather that has been tanned but not finished". Thorstensen, Practical Leather Technology, p. 318 (3rd ed. 1985).

[8] *See* NY C80873 (Nov. 7, 1997).

[9] "PUTREFACTION is the result of bacterial growth which promptly starts once an animal is dead, especially on the exposed flesh side of the flayed skin, unless it is properly cured". Sharphouse, Leather Technician's Handbook, p. 20 (1971).

[10] Emphasis added. To "decorate" is "to furnish or adorn with something becoming, ornamental or striking: EMBELLISHMENT". Webster's Third New International Dictionary, p. 587 (1981). "Embellish" is defined, in part, as "1: to make beautiful". *Id.* at 739.

[11] Emphasis added. "Accent" is defined as "3 a: to give prominence to or increase the prominence of: make more emphatic, noticeable, or distinct * * * INTENSIFY, SHARPEN". Webster's Third New International Dictionary, p. 10 (1981).

thereon, the responsibility of Customs is merely ministerial, simply to collect that additional amount. *See* 19 C.F.R. § 355.21 (1992). And uncertainties with regard thereto are to be addressed to Commerce, not Customs, *e.g.*, by requesting an individuated scope determination from the Department pursuant to 19 C.F.R. § 355.29 (1992). In the light of the record developed herein, such an approach would have been advisable, but the importer did not take it.

In fact, according to the statements submitted with the parties' cross-motions and quoted from above, the importer (and its surety) took no timely steps toward the ITA with regard to its countervailing-duty order prior to the protest to Customs and the appeal from its denial to this court. By the time of this action's commencement, the underlying entries had all been liquidated (on December 14, 1994). Then, some two years after this action had been filed, on August 1, 1997, the ITA published *Leather From Argentina* * *; Final Results of Changed Circumstances Countervailing Duty Reviews*, 62 Fed.Reg. 41,361, in which the

> Department determines that based upon the ruling of the U.S. Court of Appeals for the Federal Circuit in *Ceramica Regiomontana v. United States*, 64 F.3d 1579, 1582 (Fed. Cir. 1995), it does not have the authority to assess countervailing duties on entries of merchandise covered by these orders occurring on or after September 20, 1991. As a result, we are revoking the orders on Wool, Leather, and OCTG with respect to all unliquidated entries occurring on or after September 20, 1991.

This determination was explained, in part, as follows:

> The countervailing duty orders on Leather * * * from Argentina were issued pursuant to former section 303 of the Tariff Act of 1930, as amended (the Act)(repealed, effective January 1, 1995, by the Uruguay Round Agreements Act). Under former section 303, the Department could assess (or "levy") countervailing duties without an injury determination on two types of imports: (i) Dutiable merchandise from countries that were not signatories of the 1979 Subsidies Code or "substantially equivalent" agreements (otherwise known as "countries under the Agreement"), and (ii) duty-free merchandise from countries that were not signatories of the 1947 General Agreement on Tariffs and Trade (1947 GATT)* * * *
>
> When these countervailing duty orders were issued, Wool, Leather, Cold-Rolled and OCTG, were dutiable. Also, at that time, Argentina was not a "country under the Agreement" and, therefore, U.S. law did not require injury determinations as a prerequisite to the issuance of these orders.

* * * * * *

* * * [T]he Federal Circuit * * * held, in a case involving imports of dutiable ceramic tile, that once Mexico became a "country under the Agreement" on April 23, 1985 pursuant to the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties (the Mexican MOU), the Department could not assess countervailing duties on ceramic tile from that country under former section 303(a)(1) of the Act* * * * "After Mexico became a 'country under the Agreement,' the only provision under which ITA could continue to impose countervailing duties was section 1671." [ ] One of the prerequisites to the assessment of countervailing duties under 19 U.S.C. § 1671 (1988), according to the court, is an affirmative injury determination. *See also Id.* at § 1671e. However, at the time the countervailing duty order on ceramic tile was issued, the requirement of an affirmative injury determination under U.S. law was not applicable.

* * * * * *

In *Ceramica* * * * the countervailing duty order on ceramic tile was issued in 1982 and Mexico did not become a country under the Agreement until April 23, 1985. Therefore, the court held that in the absence of an injury test and the statutory means to provide an injury test, the Department could not assess countervailing duties on ceramic tile and the court ordered the Department to revoke the order effective April 23, 1985* * * * As the court stated, once Mexico became a "country under the Agreement," "[t]he only statutory authority upon which Congress could impose duties was section 1671. Without the required injury determination, Commerce lacked authority to impose duties under section 1671."

* * * * * *

On September 20, 1991, the United States and Argentina signed the Understanding Between the United States of America and the Republic of Argentina Regarding Subsidies and Countervailing Duties (Argentine MOU). Section III of the Argentine MOU contains provisions substantially equivalent to the provisions in the Mexican MOU that were before the court in *Ceramica** * * *[12]

Unfortunately for the plaintiff, this determination cannot be the basis for any relief herein. First and foremost, Customs liquidation of duties is essentially an irrevocable act. *Compare* 19 U.S.C. § 1514(a) *with* § 1514(b). *See Zenith Radio Corp. v. United States*, 710 F.2d 806, 810 (Fed.Cir. 1983); *Cementos Anahuac del Golfo, S.A. v. United States*, 13 CIT 981, 983, 727 F.Supp. 620, 622 (1989).

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[12] 62 Fed.Reg. at 41,361–62 (congressional and case citations omitted). *Cf. Cementos Anahuac del Golfo, S.A. v. United States*, 12 CIT 401, 687 F.Supp. 1558 (1988), *rev'd*, 879 F.2d 847, *reh'g denied*, 1989 U.S. App. LEXIS 15898 (Fed.Cir. 1989), *cert. denied sub nom. Cementos Guadalajara, S.A. v. United States*, 494 U.S. 1016 (1990).

Hence, all the retroactive relief that the ITA could grant in 1997 was with respect to "all **un**liquidated entries occurring on or after September 20, 1991".[13]

The nature of Customs liquidation also strictly circumscribes this court's jurisdiction to grant relief. When that jurisdiction is challenged, as the defendant does here, the burden is on the plaintiff to establish such authority. *E.g.*, *Earth Island Institute v. Christopher*, 19 CIT 1461, 1465, 913 F.Supp.2d 559, 564 (1995), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). For purposes of this matter, the congressional express waiver of sovereign immunity is found in 28 U.S.C. § 1581, subsections (a) and (c)[14] of which authorize civil actions against the United States and agencies and officers thereof as follows:

> (a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.
>
> * * * * * *
>
> (c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

With such exposure to suit, Congress and the agencies responsible for administering the international trade laws, particularly after passage of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 144 (1979), have created a regime that every importer must comply with before it may properly invoke this court's intervention. The roles of Customs and Commerce have been clearly differentiated by the 1979 act and are reflected in the foregoing subsections 1581(a) and (c).

When a good enters the United States, the importer deposits with Customs the duties that may be owed upon liquidation, which is the "final computation or ascertainment of the duties or drawback accruing on an entry." 19 C.F.R. §§ 141.101, 141.103, 159.1. In order to determine the proper amount, the port director determines the classification under the HTSUS. *See* 19 U.S.C. § 1202; 19 C.F.R. § 152.11. If the importer disagrees with that determination, it may file a pro-

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[13] 62 Fed.Reg. at 41,361 (emphasis added). In response to a comment by the petitioners to its published preliminary determination, 62 Fed.Reg. 24,085 (May 2, 1997), the ITA emphasized that it

> no longer has jurisdiction over liquidated entries and cannot amend its liquidation instructions* * * * *See, e.g., Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed.Cir. 1983). For this reason, the Department expressly limited its preliminary results to all *unliquidated* entries occurring on or after September 20, 1991.

Id. at 41,364 (emphasis in original).

[14] The plaintiff also urges jurisdiction under 28 U.S.C. § 1581(i). This provision cannot be invoked, however, unless the party seeking its use could not have invoked jurisdiction under 28 U.S.C. § 1581(c) or shows that that primary provision was somehow "manifestly inadequate". *See, e.g., Norcal/Crosetti Foods, Inc. v. United States*, 963 F.2d 356, 359 (Fed.Cir. 1992). Here, the plaintiff does not satisfy either exception.

test within 90 days. *See* 19 U.S.C. § 1514; 19 C.F.R. §§ 174.11(b), 174.12(e). And, if Customs denies a timely protest, the importer may appeal to this court pursuant to section 1581(a), *supra*. On the other hand, if the importer fails to so proceed within the 90-day limit, the duty assessed becomes "final and conclusive", foreclosing judicial review. *See* 19 U.S.C. § 1514(a).

If there is an outstanding antidumping or countervailingduty order, Customs, in its merely-ministerial capacity, adds and collects the appropriate duty thereunder. To repeat, since passage of the 1979 Trade Agreements Act, it has no role in determining whether such duties are appropriate and may not consider protests thereto. This is solely the province of the administrative agencies. *See* 19 U.S.C. ch. 4, subtitle IV. Under 28 U.S.C. § 1581(c) and 19 U.S.C. §§ 1516a(a)(2)(A) and 1516a(a)(2)(B)(i) and (ii), an importer that does not believe such additional duties are appropriate may challenge the order. That is, once Customs informs the importer that duties are due under a countervailing-duty order, for example, the importer must seek relief first from the ITA. Only thereafter may it seek judicial relief, and the importer must do so within 30 days. *See* 19 U.S.C. §§ 1516a(a)(2)(A) and 1516a(a)(2)(B)(iv); 28 U.S.C. § 1581(c).

In the matter at bar, the importer could have sought a scope review by the ITA that would have determined whether its entries were indeed implicated by its countervailing-duty order in light of the Understanding Regarding Subsidies and Countervailing Duties signed at Buenos Aires on September 20, 1991 between the United States and Argentina. By not doing so, and standing still as the imported goods were liquidated on December 14, 1994, a challenge pursuant to 28 U.S.C. § 1581(c), *supra*, became time-barred.

An importer or surety simply cannot, under the regulatory and relevant case law, obtain judicial review in this court "of questions relating to [countervailing] duties by challenging Customs' denial of protests to that agency's application of those orders." *Sandvik Steel Co. v. United States*, 164 F.3d 596, 601 (Fed.Cir. 1998), citing *Nichimen America, Inc. v. United States*, 938 F.2d 1286 (Fed.Cir. 1991); *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973 (Fed.Cir. 1994). As this court stated in *Xerox Corp. v. United States*, 24 CIT 1145, 1147, 118 F.– Supp.2d 1353, 1356 (2000), *rev'd on another ground*, 289 F.3d 792 (Fed.Cir. 2002), "what the plaintiff would in effect now have is a judicial determination *ab initio* of the scope of the ITA's order, but Congress has not authorized such an approach for this court any more than it has for the Customs Service." Having failed to take advantage of and to exhaust its administrative remedies[15], the plaintiff cannot now obtain judicial relief.

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[15] *See, e.g., McKart v. United States*, 395 U.S. 185, 193 (1969), quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938):

III

In view of the foregoing, plaintiff's Motion for Summary Adjudication of Issue(s) must be denied, whereas defendant's Cross- Motion for Summary Judgment, dismissing this action, can be granted. Judgment will enter accordingly.

(Slip Op. 03–87)

FORMER EMPLOYEES OF ARAN MOLD & DIE CO., INC., PLAINTIFFS, *v.* UNITED STATES SECRETARY OF LABOR, DEFENDANT.

Court No. 03–00362

ORDER

BARZILAY, *Judge:* Upon consideration of defendant's unopposed motion for voluntary remand, it is hereby

ORDERED that defendant's motion is granted; and it is further

ORDERED that this action is remanded to the United States Department of Labor to conduct an additional investigation and to make a redetermination as to whether plaintiffs are eligible for certification for Trade Adjustment Assistance; and it is further

ORDERED that remand results shall be filed no later than 60 days after the date of this order; and it is further

ORDERED that plaintiffs shall file papers with the Court indicating whether they are satisfied or dissatisfied with the remand results no later than 60 days after the remand results are filed with the Court.

Dated: July 17, 2003

JUDITH M. BARZILAY,
Judge.

The doctrine of exhaustion of administrative remedies * * * provides "that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."

The Federal Circuit has held that to proceed otherwise would be "inappropriate". *Sandvik Steel Co. v. United States*, 164 F.3d 596, 599 (1998), quoting *Sharp Corp. v. United States*, 837 F.2d 1058, 1062 (Fed.Cir. 1988).

(Slip Op. 03–88)

RAILTECH BOUTET, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT.

Court No. 96–01–00265

[On proper classification of aluminothermic charge, Plaintiff's Motion for Summary Judgment Granted; Defendant's Cross-Motion for Summary Judgment Denied.]

(Decided: July 22, 2003)

Edmund Maciorowski, P.C. for Plaintiff.

Peter D. Keisler, Assistant Attorney General, United States Department of Justice, *John J. Mahon*, Acting Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, (*Amy M. Rubin*), Trial Counsel; *Edward N. Maurer*, Deputy Assistant Chief Counsel, International Trade Litigation, United States Bureau of Customs and Border Protection, of Counsel, for Defendant.

OPINION

I. INTRODUCTION

BARZILAY, *Judge:* The import invoice for the subject merchandise in this case identifies the product in French as "charge aluminothermique pour procede: QP." Its proper identification for purposes of classification under the Harmonized Tariff Schedule of the United States ("HTSUS" or "Tariff Schedule") is the central issue before the court. Plaintiff, Railtech Boutet, Inc. ("Railtech"), imported the subject merchandise from France through the Port of Detroit. On January 19, 1993, Plaintiff protested the initial classification of the United States Customs Service ("Customs"),[1] which assigned a duty rate to the merchandise that Plaintiff had attempted to enter duty-free. That protest was granted on February 18, 1993, and for approximately two years the merchandise continued to enter duty-free, under HTSUS subheading 3810.90.20. However, on April 24, 1995, Customs reconsidered its granting of the earlier protest and reclassified the merchandise under HTSUS 3810.10.00 at a duty rate of 5.0 percent. Plaintiff protested this classification. The protest was denied, and Plaintiff filed a complaint with this court.

II. BACKGROUND

The subject merchandise is identified in multiple ways as "thermite, thermite powder, thermite mixture, thermite compound, thermite charge, thermite welding charge, welding charge, thermite oxide charge, welding portion, or aluminothermic welding charge."

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[1] Effective March 1, 2003, the Customs Service was renamed the Bureau of Customs and Border Protection of the United States Department of Homeland Security. *See Reorganization Plan Modification for the Department of Homeland Security*, H.R. Doc. 108–32 at 4 (2003).

Def.'s St. of Mat. Facts to Which There Are No Genuine Issues to Be Tried (*"Def.'s St. of Facts"*) ¶2; *Pl.'s St. of Genuine Issues in Opp. to Def.'s Mot. for Summ. J.* (*"Pl.'s St. of Facts"*) ¶2. The product consists of 60.8% iron oxide, 19.5% aluminum, 7.05% steel F category (with slight carbon content), 7.53% steel (with 0.6% carbon) and 5.12% iron (with manganese). *Def.'s St. of Facts* ¶3.

The product is used for welding railroad tracks. *The American Railway Engineering and Maintenance-of-Way Association* (*"AREMA"*) *Manual for Railway Engineering* (*"AREMA Manual"*) explains the product and how it is used:

> a. Thermite is defined as a mixture of finely divided aluminum and iron oxide. When the aluminum and iron oxide react, the reaction is called a thermite reaction. Thermite welding is accomplished with the heat produced by the thermite reaction. Filler metal is obtained from the iron reaction product and pre-alloyed steel shot in the mixture.
>
> b. When ignited, the reaction within the thermite mixture develops a temperature approaching 5000 degrees F and produces a filler metal at about 3500 degrees F which, when introduced into a gap between the rails, welds or fuses the ends together. The reaction metal is generally iron which has been enriched with alloys to produce a filler metal assimilating the characteristics of the rail steel being welded.

Pl.'s Mem. in Opp. to Def.'s Mot. for Summ. J. (*"Pl.'s Opp. Br."*) *Ex.* 2, section 2.5.1

The relevant portion of the Tariff Schedule reads as follows:

3810	Pickling preparations for metal surfaces; fluxes and other auxiliary preparations for soldering, brazing or welding; soldering, brazing or welding powders and pastes consisting of metal and other materials; preparations of a kind used as cores or coatings for welding electrodes or rods:
3810.10.00	Pickling preparations for metal surfaces; soldering, brazing or welding powders and pastes consisting of metal and other materials:
3810.90	Other:
3810.90.10	Containing 5 percent or more by weight of one or more aromatic or modified aromatic substances.
3810.90.20	Consisting wholly of inorganic substances.
3810.90.50	Other

Customs' classification of the subject merchandise in this case has swung back and forth like a pendulum. Plaintiff entered the product

in 1992 under HTSUS subheading 3810.90.20, which is a duty-free subheading and covers "fluxes and other auxiliary preparations for soldering, brazing or welding; preparations of a kind used as cores or coatings for welding electrodes or rods: Consisting wholly of inorganic substances." Plaintiff contends the product should be considered an "auxiliary preparation." The Customs office at the Port of Detroit rejected this classification and classified the product under HTSUS subheading 3810.10.00, at a duty rate of 5 percent *ad valorem*. Subheading 3810.10.00 covers "pickling preparations for metal surfaces; soldering, brazing or welding powders and pastes consisting of metal and other materials." Specifically, Customs claims the product should be classified as a welding powder.

Plaintiff protested Customs' classification of the product as a welding powder on February 18, 1993, and Customs granted the protest. The change in Customs' position was apparently triggered by a report from the Customs laboratory in Chicago stating that the "merchandise has a particle size greater than powder. Therefore [it is] classified as granular and excluded from classification in 381010 and should be 38109020\free." *Pl.'s Cross-Mot. for Summ. J.* (*"Pl.'s X-Mot."*) *Ex.* 11.

Customs then began another round of internal reconsideration of the product's classification, evidenced by an internal communication from the field import specialist in Detroit to the national import specialist regarding entries in 1994. *Pl.'s X-Mot. Ex.* 15. The field import specialist stated that the "Chicago lab was non committal on using a definition for a powder versus a granule." However, this second report from the Chicago laboratory seems fairly clear: "The sample consists of disks of aluminum and iron, globules and granules of iron and iron oxide, and grains of aluminum. Most of the particles are over 1000 micrometers and thus the sample should not be considered a powder." Lab Report No. 3–95–31062–00 in *Pl.'s X-Mot. Ex.* 14.

The field import specialist also noted Headquarters Ruling 953360 of June 17, 1994 which classified identical merchandise under subheading 3810.10. In response, the national import specialist stated that the "product appears to be a mixture of metal oxide with aluminum and steel, all in a powder form." Based on this characterization, the national import specialist agreed to classify the product under subheading 3810.10 at a 5 percent duty rate. The national import specialist also noted that the definition of granule in Note 1(h) in Chapter 72 of the HTSUS "was intended for classification of goods in that chapter."

On April 24, 1995, Customs reconsidered allowing the goods to be classified under Plaintiff's preferred subheading and issued a Notice of Action, reclassifying the product to subheading 3810.10.00. *Pl.'s X-Mot. Ex.* 13.

While Railtech's claims were working their way through the Customs process, another manufacturer imported a similar product from Canada. The importer claimed a duty-free rate under the Canada Free Trade Agreement ("CFTA") "various classifications." *Pl.'s X-Mot. Ex.* 17. The field import specialist at the port denied the status under CFTA (ruling the product was not manufactured in Canada) and classified the entries under HTSUS 3810.10. the importer's preferred subheading. *Id.* The question of proper classification was then taken up by the Chief, National Import Specialist Division, in a memorandum to the Director of the Office of Regulations and Rulings, U.S. Customs Headquarters. *Pl.'s X-Mot. Ex.* 18. That memorandum concluded:

> Based on the facts contained in the protest package we believe that the Rail Welding Kit is a set classified in HTS 3810.90.2000, that is not a product of Canada and is therefore not subject to CFTA.

Id.

In response to this memorandum, the Office of Regulations and Rulings prepared a memorandum, dated June 29, 1993, which concluded with regard to the kits from Canada:

> Finally, not to put undue emphasis on the practicalities of the case, the [ ] importer wants 3810.10 and FTA, the port says you can have 3810.10 but not FTA, and the NIS says 3810.90.20 but no FTA, to which I say, who cares since that's free * * * !

Pl.'s X-Mot. Ex. 19.

Ultimately, Customs issued HQ ruling 953360, discussed above, which classified the goods under the importer's preferred heading of 3810.10, but denied CFTA status, the only option which was not "free." With regard to the product imported from Canada, however, the importer did not challenge the description of the product as a powder.

III. Standard of Review

Customs' classification decisions are presumed to be correct. 28 U.S.C. § 2639(a)(1) (1999). The presumption does not apply when there is no material fact at issue, because the presumption does not carry force with questions of law. *Universal Elecs. Inc. v. United States*. 112 F.3d 488, 492 (Fed. Cir. 1997). When there are no factual issues in the case, the "propriety of the summary judgment turns on the proper construction of the HTSUS, which is a question of law," subject to *de novo* review. *Clarendon Marketing, Inc. v. United States*, 144 F.3d 1464, 1466 (Fed. Cir. 1998) (noting that legal issues are subject to plenary review by this Court and the Court of Appeals); *see also* 28 U.S.C. § 2640. The court will also consider the reasoning of a Customs classification ruling, to the degree the ruling

exhibits a "power to persuade" as outlined in *United States v. Mead Corp.*, 533 U.S. 218, 235 (2001) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

IV. DISCUSSION

Under General Rule of Interpretation ("GRI") 1 to the HTSUS, the first step to classify an article is to determine the appropriate heading. In this case, both parties agree the appropriate heading is 3810. Under GRI 6, the next step is to determine the appropriate subheading within 3810, looking to "subheading notes, and *mutatis mutandis*, to [GRI 1 through 5] on the understanding that only subheadings at the same level are comparable."

To decipher a term's correct meaning the court will look to its common meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (citations omitted). A term's common and commercial meaning are presumed to be the same. *Sinod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989) (citations omitted). In addition to the terms of the subheading, the court may also look to the Explanatory Notes; although they "do not constitute controlling legislative history," they can "clarify the scope of HTSUS subheadings." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994) (citing *Lynteg, Inc. v. United States*, 976 F.2d 693, 699 (Fed. Cir. 1992)).

The relevant portion of the Explanatory Notes to Heading 3810 states:

> (2) **Fluxes and other auxiliary preparations for soldering, brazing or welding.** Fluxes are used to facilitate the joining of the metals in the process of soldering, brazing or welding, by protecting the metal surfaces to be joined and the solder itself from oxidation. They have the property of dissolving the oxide which forms during the operation. Zinc chloride, ammonium chloride, sodium tetraborate, rosin and lanolin are the products most commonly used in these preparations.
>
> This group also includes mixtures of aluminium granules or powder with various metallic oxides (e.g., iron oxide) used as intense heat-generators (alumino-thermic process) in welding operations, etc.
>
> (3) **Soldering, brazing or welding powders and pastes consisting of metal and other materials.** These preparations are used to make the metal surfaces to be joined adhere to each other. Their essential constituent is metal (usually alloys containing tin, lead, copper, etc.). These preparations are classified in the heading **only when**:

(a) They contain other constituents as well as metals. These constituents are the auxiliary preparations described in (2) above; and
(b) They are put up in the form of powders or pastes.

(emphasis in original).

The parties agree there are four distinct categories within the heading 3810: (1) pickling preparations for metal surfaces; (2) fluxes and other auxiliary preparations for soldering, brazing or welding; (3) soldering, brazing or welding powders and pastes consisting of metal and other materials; (4) preparations of a kind used as cores or coatings for welding electrodes or rods. Customs contends the subject merchandise should be considered "welding powders" under category 3. *Def.'s Mem. in Supp. of its Mot. for Summ. J.* ("*Def.'s Br.*") at 9. Plaintiff protested this classification and argues that the merchandise should be considered an "auxiliary preparation" under category 2. *Pl.'s Opp. Br.* at 6. Both parties agree that the product belongs under heading 3810; however, each also offers alternatives if its preferred classification is not upheld.

Consistent with the Explanatory Notes, Customs agrees with Plaintiff that the product does contain "auxiliary preparations." *Def.'s Br.* at 9.[2] Customs also contends the product contains additional material, metal "filler," which "fills in the gap between two pieces of railroad track," that "prevents the product from being classified in Railtech's claimed provision." *Id.* at 10. The "filler" does qualify as a metal. Under the guidance provided by the Explanatory Notes, the classification advanced by Customs would be plausible if the "essential constituent is metal" and if, consistent with the terms of subheading 3810.10, the product is also, in the words of the Explanatory Notes, put up in the form of a powder or paste.

Plaintiff contends that the product is not in the form of a powder, and that, therefore, it cannot fit under the restrictive language of the Explanatory Notes requirement. Plaintiff insists that "auxiliary preparation" covers the entire mixture, including the steel filler. The Explanatory Notes indicate the term "auxiliary preparations" covers aluminum and iron oxide mixtures, which constitute 80.3% of the product. The Notes do not specifically exclude inclusion of other elements from the mixture for the product to be considered an auxiliary preparation.

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[2] Defendant includes in its Appendix B excerpts from *American Welding Society's Welding Handbook* (7th ed., Vol 3, 1981) ("*Welding Handbook*") which defines "thermit welding" ("thermit" is a trademark name for thermite) as:

> A welding process which produces coalescence of metals by heating them with superheated liquid metal from a chemical reaction between a metal oxide and aluminum, with or without the application of pressure. Filler metal, when used, is obtained from the liquid metal.

Id. at 396. The *Welding Handbook* states that "[t]he most common application of [this] process is the welding of rail sections into continuous lengths." *Id.* at 397. The *Welding Handbook* also states that alloying elements and other additions can be added to the mixture as required. *Id.*

A. Definition of Powder.

For the merchandise to be classifiable under subheading 3810.10, it must be put up in the form of a powder.[3] The only question is whether the definition of "powder" under the Tariff Schedule is broad enough to encompass this product. The Explanatory Note 3 requires that the entire product be composed of powders: "[t]hese preparations are classified in the heading **only when** * * * (b) They are put up in the form of powders or pastes." Customs argues that the powders or pastes requirement applies only to the "essential constituent" and not the auxiliary preparation which must also be part of the product to qualify. *Def.'s Br.* at 13–14. This is contrary to the clear dictates of Note 3. Auxiliary preparations under Explanatory Note 2 may be of granule or powder form, but only powders may be considered soldering, brazing or welding powders under Note 3.[4]

Given that it is the product as a whole and not any distinctive elements within it which must qualify as a powder, the physical description of the product is paramount. Plaintiff has submitted test results of a sample which found that 63.38 percent of the subject merchandise would pass through a 1 mm. mesh aperture. *Pl.'s X-Mot. App.* 3. Further, 99.74 percent of the subject article will pass through a mesh aperture of 5 mm. *Id.* The product itself appears to be a composite of small metallic pellets, granules and powder. It is often referred to as "welding powder."

Customs asks the court to rely on common definitions of the term "powder" culled from non-scientific or trade-specific references. *See Def.'s Br.* at 14–15. The definitions provided by Defendant rely on common phrases to describe a powder: "finely divided state" (*Webster's Ninth New Collegiate Dictionary* (1991)); "extremely small pieces" (*Cambridge Int'l Dictionary of English* (2002)); "tiny loose particles" (*Ultra Lingua English Dictionary* (2001)); "fine particles or dust" (*The Columbia Encyclopedia* (6th ed. 2001). *Webster's Third International Dictionary* (3d ed. 1993) defines powder as a "substance composed of fine particles." It defines "fine" as "very small" or "not coarse." Clearly a large portion, but not all, of the subject merchandise meets this definition.

Defendant points out that the Explanatory Notes to 3810 use two terms, "powder" and "granules." In its description of auxiliary preparations it states that the "group also includes mixtures of aluminum granules or powder." *Webster's Third International* defines granule as "a small particle. *The Oxford English Dictionary* (2d ed. 1989) de-

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[3] The court finds the product is not put up in the form of a powder; therefore, it need not reach the issue of whether metal is the "essential constituent."

[4] Adhering to a requirement that the entire product be "put up in powder" form relieves Defendant of the responsibility of proving that all of the larger elements are iron oxide or aluminum and not steel. Under Customs' proposed interpretation, only the "auxiliary preparation" can include non-powder elements, the metal must be in powder form. Customs has not offered any proof that the non-powder portions of the subject merchandise are solely iron oxide and aluminum. Considering that the steel filler is also referred to as "steel shot" it is unlikely Customs could meet such a narrow definition. *See AREMA Manual* Section 2.5.

fines it as "a small grain, a small compact particle; a pellet." These common definitions indicate significant overlap with the definitions of "powder" cited by the Defendant. Because the Notes use both terms, it appears to be the intent of the Tariff Schedule that they should not be given the same definition. *See Productol Chem. Co. v. United States*, 74 Cust. Ct. 138, 151 (1975); *see also Washington Hospital Center v. Bowen*, 795 F.2d 139, 146 (D.C. Cir. 1986) (the use of different language presumes Congress intended different meanings) (citation omitted). In distinguishing between small particles which are in the form of a powder, and small particles which are not, the common dictionary definitions are useful which indicate that powder is more fine—that is, smaller than granules.

When the court is required to determine the difference between the words "powder" and "granule," and the Explanatory Notes do not provide a method within that chapter, then the court must look to other sources. An examination of several of those sources indicates that the subject merchandise cannot be considered a powder within the meaning assigned by the Tariff Schedule, even though it is partially composed of powder.[5]

Explanatory Note 3(b) to Heading 3810 states that "preparations consisting solely of metallic powders, whether or not mixed together, are **excluded (Chapter 71** or **Section XV** according to their constituents)" (emphasis in original). Plaintiff urges that this explanation serves to apply the definition of "powder" found in HTSUS Section XV for metallic powders to metallic powders in heading 3810. The HTSUS Notes for Section XV state at 6 (now 8(b)) that powders are "[p]roducts of which 90 percent or more by weight passes through a sieve having a mesh aperture of 1 mm." The HTSUS Notes to Section XV further state that this definition is applicable "[i]n this section" indicating that it may not be applicable across the Tariff Schedule. However, the Explanatory Notes to heading 3810 clearly require that powders consisting solely of metallic powders should be classified under Chapter 71 or Section XV. Therefore, Plaintiff argues, the 1 mm. definition is also applicable for understanding the Explanatory Notes to 3810 because the definition in Section XV is incorporated by reference. Defendant disagrees and argues that the 1 mm. requirement refers only to products of Section XV. Were the court to adopt Defendant's interpretation, some products could be considered powders and, therefore, be excluded from heading 3810 according to the Explanatory Notes to that heading, but not meet the stricter definition of powder under Section XV and, consequently, be excluded from those headings as well. Customs' use of conflicting definitions of powder would lead to excluding a product from both

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[5] Defendant notes that within the industry the product is sometimes referred to as a powder. *See Def.'s Br.* at 12. While product name may be used to make out a *prima facie* case as to the nature of the product, it does not assist the court in determining the legal question as to the scope of the subheading. *See United States v. Puttman*, 21 C.C.P.A. 135, 138 (1933).

applicable headings based on two different definitions of the same word. It is a standard rule of statutory interpretation that "where the same word or phrase is used in different parts of the same statute, it will be presumed, in the absence of any clear indication of a contrary intent to be used in the same sense throughout the statute." *Productol*, 74 Cust. Ct. at 151 (citations omitted).

Plaintiff also relies on two scientific reference sources. Volume 14 of the *McGraw Hill Encyclopedia of Science and Technology* (8th ed. 1997) states:

> Typically, metal powders for commercial use range from 1 to 1200 micrometers. For most applications, powder purity is higher than 99.5%.

Powder Metallurgy Science, Randal M. Germain, Metal Powder Industries Federation (2d. ed. 1994) states: "First, a powder is defined as a finely divided solid, smaller than 1 mm. in its maximum dimension."

Finally, the court also notes that the only Customs laboratory report to consider the issue of whether the subject merchandise is a powder or granule unequivocally stated that "[m]ost of the particles are over 1000 micrometers and thus the sample should not be considered a powder." Lab Report No. 3–95–31062–00 in *Pl.'s X-Mot. Ex.* 14.

The court finds that the definition of powder found in scientific reference sources and other parts of the Tariff Schedule, requiring that at least 90 percent of the merchandise meet the 1 mm. standard, is consistent with the "finely divided state" definition found in common language dictionaries. Therefore, the common and commercial meanings the court uses for guidance in construing the word powder are the same. The Federal Circuit has spoken to this question.

> This is not a case in which there is a conflict between the dictionary meanings and a commercial standard. *See Rohm & Haas Co. v. United States*, 727 F.2d 1095, 1097–98 (Fed. Cir.1984); *Winter-Wolff, Inc. v. United States*, 996 F. Supp. 1258, 1263 [CIT 1998]. Rather, it involves an authoritative industry source that is generally consistent with the dictionary definitions and has been used to supplement the dictionary definitions with additional necessary precision. *See Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789–90 (Fed. Cir.1988).

Rocknel Fastener, 267 F.3d at 1361.

Therefore, the court reads the definitions drawn from the industry and scientific publications in conjunction with those found in the general English language dictionaries. The 1 mm. definition provides a specific standard to distinguish between the common definitions of granule (small particles) and powder (very small particles). In the words of the Federal Circuit, the 1 mm. definition supple-

ments "the dictionary definitions with additional necessary precision." *Id.* The subject merchandise, according to laboratory tests submitted by both Plaintiff and Defendant, does not meet the more precise standard of at least 90 percent of the product fitting through a 1 mm. aperture. Therefore, it cannot be considered powder for purposes of classification under subheading 3810.10.00.[6]

B. The product is an "Auxiliary Preparation".

The term "auxiliary preparation" covers the subject merchandise. The Explanatory Notes' description of an auxiliary preparation is nearly identical to the name of the product and the description of its function under the AREMA standards. The product is referred to as an aluminothermic welding charge, *Def.'s St. of Facts* ¶2, that mirrors the name in French: "Charge aluminothermique pour procede," *id.* ¶1. The Explanatory Notes describe an auxiliary preparation as including "mixtures of aluminium granules or powder with various metallic oxides (e.g., iron oxide) used as intense heat-generators (alumino-thermic process) in welding operations."

The only variation between the description in the Explanatory Notes and the product at issue is the addition of the filler steel shot. This addition does not prevent the product from being specifically encompassed by the term "auxiliary preparation." "Where a dutiable provision names an article without terms of limitation all forms of the article are thereby included unless a contrary legislative intent otherwise appears." *H.T. Kennedy Co. v. United States*, 32 Cust. Ct. 124, 127 (1954) (internal quotations omitted). In fact, the description of how the "charge" operates provided for in the *AREMA Manual* indicates that the preparation will include "pre-alloyed steel shot in the mixture." Section 2.5.1 (a).

Similarly, the *Welding Handbook*, excerpted in the Defendant's appendix, supports a definition of auxiliary preparation as including substances in addition to the metal oxide and aluminum: "Filler metal, when used, is obtained from the liquid metal." *Welding Handbook* at 396. The *Welding Handbook* also indicates that the "most common application of the process is the welding of rail sections into continuous lengths." *Id.* at 397. To accept Customs' restricted definition of auxiliary preparation would require ignoring what Customs' own exhibit refers to as the "most common application." It is clear that the subject merchandise imported by Plaintiff is a type of auxiliary preparation used in welding. The steel filler improves the operation of the preparation; it does not change it into a different product. The aluminothermic charge with steel shot filler is an auxiliary

[6] The court notes that such a reading is consistent with the laboratory reports prepared by Chicago and Detroit which provide the foundation for granting of Railtech's initial protest. Under *Skidmore*, consistency of action by an agency is a factor to determine how much deference to grant a decision. *See* 323 U.S. at 140. Customs' multiple and contradictory determinations in this case undermine such deference to its final determination.

preparation mixture including steel shot used in welding. Expressed in different terms, it is a preparation *with* steel shot; it is not a preparation *and* steel shot.[7]

The Explanatory Notes explicitly include the most basic type of aluminothermic charge, consisting of aluminum and iron oxide. *See Bausch & Lomb, Inc. v. United States* 21 CIT 166, 174–75, 957 F. Supp. 281, 288 (1997) (Explanatory Notes are particularly persuasive when they expressly include the article at issue). Further, the Explanatory Notes are inclusive, not exclusive, in their description. ("This group also includes mixtures of aluminum granules or powder with various metallic oxides* * * * *") Here, also, the Notes do not contain any limiting language such as "solely composed of" or "only." The welding and railroad engineering manuals provide evidence that it is common for metal filler to be included within the mixture. This does not alter what the product is, only its specific method of application. To interpret the subheading along the lines urged by Customs would make any mixture containing a substance beyond aluminum and metal oxide incapable of being classified under this subheading. The manuals cited above indicate that many, if not most, of the mixtures using a thermite charge include additional materials. Plaintiff and Defendant both acknowledge that the steel shot plays a crucial, possibly essential role in the proper functioning of this product. It is difficult to believe a subheading created to cover a specific kind of product would exclude the most common types of that product.

V. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment is granted. Defendant's Cross-Motion for Summary Judgment is denied. Judgment will be entered accordingly.

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[7] Having determined that "auxiliary preparation" encompasses the entire product, the court need not employ GRI 3, which governs classification of mixtures, "*prima facie*, classifiable under two or more headings."

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C03/30 7/15/03 Barzilay, J.	Bissell, Inc.	01–01062	8509.80.00 4.2%	8509.10.00 Free of duty	Agreed statement of facts	Seattle Power Steamer

ABSTRACTED VALUATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
V03/03 711/03 Ridgway, J.	La Perla Fashions, Inc.	02–00554	Transaction value	Invoice price actually paid by LPF to the exporter, Gruppo La Perla, S.p.A. of Italy, a related company	Agreed statement of facts	Newark New York Various articles of apparel

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